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International Court of Justice

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OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM GOERING ET AL, DEFENDANTS, SITTING AT NURNBERG, GERMANY, ON AUGUST 21, 1946, 1000-1700 LORD JUSTICE LAWRENCE, PRESIDING.

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THE PRESIDENT: One moment, Dr. Pelckmann, although perhaps you can help me.

In view of a letter which has been addressed to the Tribunal signed by most of counsel for the organizations but not, I think, by Dr. Servatius, dated 15 August, 1946, the Tribunal would be glad to know from counsel for the organizations how long they anticipate those who remain to present their documents and affidavits think they will take in doing so and in in what order they propose to make their speeches and whether they are ready or will be ready when the time comes to make those speeches because the Tribunal is very anxious and is not prepared to postpone the presentation of those speeches.

Therefore, the Tribunal thinks it is proper at this time to ascertain, as far as possible, whether the speeches will be ready in due time.

I see that Dr. Kubuschok is not here. Dr. Pelckmann is here and perhaps he can tell us as far as he is concerned and Dr. Servatius.

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DR. PELCKMANN: Perhaps I will need two more hours. I believe my colleague, Dr. Laternser, will need one day for his speech. How long the SA will take I do not know. As to how long we shall take with the pleas, I can only repeat what was said in the letter because we were occupied with the taking of testimony until a few days ago and then with the presentation of documents and affidavits. But I believe that on Monday we could all begin with our pleas. As far as I know, my colleague, Servatius, would already be ready to his plea.

We announced in the letter that we could hand in our pleas at the end of the week if we count on three days for the translation and mimeographing. If one or the other of us could hand in the manuscript on Friday, we could begin on Monday or Servatius could begin at the end of the week. I personally, if I may say so, would not be ready before Monday.

THE PRESIDENT: You will be ready by Monday?

DR. PELCKMANN: Not before Monday.

THE PRESIDENT: I think I ought to point out to the counsel for the organizations that the letter was addressed to the Tribunal on the 15th of August, which is six days ago, so that they have had six days since then in which to get their speeches ready. I have also pointed out to each one in turn of the counsel for the organizations that it is quite unnecessary and it is wasting the time of the Tribunal to take so much time in commenting upon their affidavits and other documents; and the time would have been very much better spent in preparing their speeches. But I gather from what you say -- and perhaps Dr. Servatius will be able to tell the Tribunal whether he agrees with it, and Dr. Laternser, too -- that the counsel for the organizations will in all probability be ready to go on with their speeches on Monday and not to request any delay after that. Dr. Servatius, I understand, is ready to go on at once.

DR. PELCKMANN: Your Lordship, perhaps I may say one more thing. The documents and affidavits are being commented on at somewhat greater length than seems necessary to the Court. This is because the Court said the following, if I recall correctly, when the time of the speeches was set at three hours, it was said at the same time that the attorneys would have an opportunity to make comments on their presentation of affidavits and documents so that the time of three hours for the speech would remain for other purposes. We concluded

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from that that we would have an opportunity to comment on the evidence now in the presentation of documents and affidavits.

THE PRESIDENT: Yes, but counsel for the organizations must realize that all these affidavits are summarized in writing before us; and therefore simply to repeat the summary which we have in writing, of course, does not really help us at all.

You have mentioned in the absence of Dr. Laternser, who I see is now present, that Dr. Laternser, you think, would be likely to take one day on these documents.

DR. PELCKMANN: Yes, he told me last night that he would need a day.

THE PRESIDENT: Let me hear what he is going to say. Dr. Laternser, in your absence, what I was saying was that the Tribunal had had this letter of the 15th of August, which was written six days ago, and that the Tribunal would like to know how long counsel for the organizations anticipate they will take over their documents and whether they would be ready to go on with their speeches immediately thereafter. In answer to that, Dr. Pelckmann told me that he would take two more hours and that he heard from you that you would be likely to take one day.

I think the Tribunal would be very disinclined, very much disinclined, to listen to one whole day upon the documents.

DR. LATERNSER: Mr. President, I believe that I will certainly need a day. Please consider the following: The American prosecution used two days to present their evidence. The Russian Prosecution used many days for their evidence against the General Staff. I believe that within the framework assigned to me, I face considerable difficulties, and then I need only one day. That is a fraction of the time which the prosecution used to present the evidence against the General Staff. If that is not too much --?

THE PRESIDENT: Dr. Laternser, you are leaving out consideration altogether of the fact that we have set up these Commissions and the fact that you have been before these Commissions not only for one day but for many days.

DR. LATERNSER: Mr. President, I presented the affidavits to the Commission. This was of a formal nature. The purpose of my presentation of evidence is to bring a certain order so that the Court may see to what point of the indictment the individual affidavits are to apply.

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MR. DODD: Mr. President, I'd like to point out to the Tribunal that Dr. Laternser spent between nine and ten days before the Commission on the General Staff; and, of course, he called witnesses here in the court room as well, two, I believe, or three -- I've forgotten the number.

DR. LATERNSER: Mr. President, that was not quite correct. I used several days to examine witnesses but not to present documents; and I must be in a position to present this written evidence to the Court in a certain order. Otherwise, it cannot be effective.

THE PRESIDENT: You say you are not in a position to present it in a certain order. Well, nobody wishes you to present the affidavits in the order in which they are numbered on the document; but you can group them, presumably, unless they all deal with different subjects. I rather gather that you have a very great number of affidavits; and I feel quite certain that a great many of them deal with the same topic; and, therefore, in a very short time -- probably in the course of an hour -- anybody could go through that list of affidavits and could see which affidavits relate to the same subject and could, therefore, group them. It is perfectly simple; and the Tribunal will not under any circumstances be prepared to have their time taken up for longer than half a day in the presentation of documents by your organization or by any other organization.

DR. LATERNSER: Mr. President, may I say something else on this point? I ask the Court to consider that the Russian prosecution used several days to make the most serious charges against the military leadership; and I ask that I may have approximately the same opportunity to answer these charges.

THE PRESIDENT: Mr. Dodd has just pointed out that you have been before the Commission for nine or ten days; and you have already spent two days here. We have the very able and laborious work which has been performed by these Commissioners all before us in writing. I have before me at this moment a document. I don't whether it is in consecutive numbers -- not quite consecutive numbers -- but any rate it goes up to the number of 3,172, affidavits which have been summarized. I say not consecutive numbers but at any rate a bundle this thick if affidavits, which have been summarized in writing by these Commissioners.

You counsel for the organization have had the opportunity of reading

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the report which has been made by the principal Commissioner on these affidavits and have, as I understand, not commented adversely upon any remark in that report. All these matters are before the Tribunal; and in my opinion the Tribural have granted to the organizations the fullest possible and most adequate opportunity of being heard before the Tribunal; and the Tribunal think that they have heard enough on this subject; and they adhere to the decision which I have announced.

All right, Dr. Pelckmann.

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DR. PELCKMANN: High Tribunal, I shall now take up the last group of individual affidavits.

First, I present affidavit number 108.

MR. DODD: Mr. President, I am sorry to interrupt, but we are a little bit confused. Sir David and I both feel that there may be some misunderstanding abou the position of Dr. Pelckmann. We are rather of the opinion, from listening to him, that he means that he will be ready only to submit his speech for translation on Monday, and we wondered if the Tribunal did not understand him to say tha he would be ready to make his speech on Monday, and there would be a spread ther of three days.

THE PRESIDENT: Certainly, the way I understood you, Dr. Pelckmann, was tha you would be prepared to make your speech on Monday; not that it would necessari come on Monday because, of course, Dr. Servatius' speech will come before yours, Presumably, unless you make other arrangements amongst yourselves, the speeches will be made in the order in which the Documents and the witnesses have been presented. Doubtless you can make arrangements among yourselves--which the Tribu will only be too glad to assent to--if one is ready and the other is not, but they will expect that there will be no delay.

DR. PELCKMANN: I believe, Your Lordship, that that will be all right. As stated in the latter, we will present the manuscripts for translation and mimeographing by the end of the week. If, for example, I turn it in on Friday afternoon, I believe I can speak on Monday afternoon or Tuesday morning.

THE PRESIDENT: Wait a minute. That is all very well, but the Translating Division are human, and I don't see any reason why they should work on Sunday. I may be wrong, but I think I remember that you have assistants who are helping yo and who presumably have been helping you ever since the 15th of August, on which day this document was presented. As I pointed out already, that is six days ago. Some parts of the speech ought to be ready now and ought to be in the hands of th Translating Division.

I see by the list that has just been handed to me that you have four assistan or that Dr. Babel has four assistants and four secretaries, and that you have one associate counsel and a secretary. I don't understand why the speech, or some par of it, should not have been handed to the Translating Dividion already, and the

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same with the other counsel appearing on behalf of the organizations.

DR. PELCKMANN: We are still in the presentation of evidence, Mr. President. So far it has not been possible for me to prepare a complete plea before the end of the presentation of evidence. But may I make a suggestion, in order to fix it exactly, Mr. President? I can turn in the manuscript of my plea for the Translating Section on Friday afternoon, and I can propably hand in a considerable part of it before that time.

THE PRESIDENT: All I am prepared to say is this, that I will not, on behalf the Tribunal, order the Translating Division to work any more than the officer in command of that Division thinks proper; and the Tribunal expects that the speeche will go on without delay. Is that clear?

DR. PELCKMANN: I was just dealing with SS Affidavit 108. It makes it clear that the SS had nothing to do with the drive for the seizure of manpower.

Affidavits 102 and 103 prove that the so-called voluntary self protection, abbreviated FS--which the prosecution considers a Fifth Column-- in Slovakia and the Sudetenland, had no connection with the SS and was never armed.

Affidavits 106 and 101 deal with the nature of the organizational book of the NSDAP and with that of the NS Year Book. The prosecution quotes from these books to prove official opinions of the Party. These affidavits, however, state that the organizational book and the NS Year Book were not official publications and that they are therefore no proof for organizational questions.

SS Affidavit 109 deals with the charge of the prosecution that SS men were protected by the regime when they committed crimes. It proves that when SS members committed punishable actions, before the establisment of the SS courts in 1939, to the extent that these actions became known the SS officers saw to it that no difficulties were put in the way of the regular course of justice.

Finally, there is a last group, affidavits 90, 30, 91. and 92.

Affidavit 30 is available only in the French translation. It is an answer to the assertion of the prosecution that the whole SS organization and its members knew, or had to know, that the SS was a criminal organization.

The affidavits state, as an example only, that there were particularly good relations between the Foreign Diplomatic Corps and the SS, so that the SS members who heard of it could not assume that this organization was criminal.

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Now I wish to deal briefly with the affidavits which I mentioned at the beginning, of which no digest is available.

THE PRESIDENT: What did you mean by saying that there was a group, which to down as being 90, 31 or 30, or possibly both of them, and 92? By the document is before me, Affidavits numbers 90, 91 and 92 have been withdrawn. Is that a mistake?

DR. PELCKMANN: I had made application in the Commission to have them admitted, and the prosecution did not want to have them admitted. As far as I can recall, no decision was reached by the Commission; the decision was postponed. I heard two days ago that Colonel Neave, who was presiding in the Commission at th time, had said that they had finally not been admitted. That is new to me. If th should be the case, then I would ask for a decision of the Tribunal whether thes affidavits can be admitted.

THE PRESIDENT: You just cited them as a group. Have they got any relation t number 30? Number 30, you say, relates to the relationship between the SS and th Foreign Diplomatic Corps. Do 90 and 92 relate to that?

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DR. PELCKMANN: Yes, 30 was approved and is available in the French translation.

THE PRESIDENT: Then we can take it then, and we will consider the application. We can take it that 90 and 92 deal with the same subject, is that right?

DR. PELCKMANN: Yes.

THE PRESIDENT: That's quite sufficient. I don't want any more.

DR. PELCKMANN: Now I shall deal with the affidavits 68, 64, and 69. I must refute the assertion of the Prosecution that the mistreatment of the men, the mass exterminations and killings in the concentration camps can be charged against the whole SS because, as the Prosecution asserts, they were known to the great mass of SS men. The very important records of the trials of the Allied Military Courts against members of the concentration camp Kommandanturs and against guards, for example, the trials at Belsen, Mauthausen, Dachau, Neuengamme and Rastadt -- I was not able to obtain these transcripts. A systematic examination of the witnesses and a part of the affidavits from the camps made it possible for me to ascertain facts to refute the assertion of the Prosecution.

On 29 January, the President said that the witnesses and evidence was wanted from the defense precisely on the point concerning concentration camps. On the same day, in answer to the question of the French Prosecutor Dubost, the Court was convinced that the same terrible conditions prevailed in all camps which two witnesses had testified to. The President answered, "If you want to prove that it is necessary to call a witness from each of the hundreds of camps." I refer to the transcript. And therefore, for the purpose of defense, I have a number of affidavits from guards, members of the Kommandanturs, and inmates of camps, and also from visitors of the concentration camps. I have submitted them as evidence to the contrary. Now, I refer only to an affidavit which seems very important to me, number 68.

THE PRESIDENT: Now, why don't you tell us which the affidavits are, that's what we want you to do. You are telling us now, and referring to some statement I made in January, that you have got affidavits made from each camp. Well, what are the affidavits? It's quite easy to tell us what the groups are, isn't it?

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DR. PELCKMANN: Those groups, Mr. President, I mentioned yesterday.

THE PRESIDENT: If you mentioned them yesterday, why do you go back to them today?

DR. PELCKMANN: In order to stress the importance of the affidavit number 68 which I am about to explain. It is an affidavit of a commandant of a concentration camp. I can understand that their general feeling, the Court will be distrustful of this commdant, but nevertheless, I ask that this very detailed affidavit be read. It deals with organizational questions which are significant in respect to the question of who is responsible for crimes and mistreatment of inmates in concentration camps, and who could know about them.

For example, this affidavit explains the position of WVHA, Amtsgruppe D. I ask you to pay attention to the fact that this office must not be confused with the RSHA. Confusion has already occurred in summing up the testimony of witnesses before the Court. I should like to explain how important it is to re-examine the question of organization of the concentration camp system with the aid of this document 68. But the other parts of this affidavit are also very important.

The other important affidavits are numbers 64 and 69. They are also testimony of SS judges. Just like the witness Morgen, these judges had put in the investigation against concentration camp criminals. From the witness Morgen himself there are the affidavits 65, 66, and 67.

THE PRESIDENT: Why does he make two affidavits on one day?

THE PELCKMANN: I did not understand your Lordship.

THE PRESIDENT: I said, why does he make two affidavits on one day? Why not make one affidavit?

DR. PELCKMANN: On this day work piled up and there were examinations before the Commission. Witnesses were examined. The witness Morgen arrived quite at the end. I had to see to it that the affidavits were presented as quickly as possible. For that reason . . .

THE PRESIDENT: Very well.

DR. PELCKMANN: It is only a technical reason, your Lordship. In order that this complex of concentration camp investigations which, in my opinion, is of importance for the Court in judging the question of

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responsibility for the SS so far as the concentration camp system is concerned, I ask that these affidavits of these two judges be closely examined. I will deal with them in my speech.

Finally, I ask the Tribunal to note affidavit 70 which has been translated completely and which is rather long. There is neither a French nor an English translation yet. This affidavit gives a cross-section from a camp with 2,800 SS inmates. They include reports from most Standarten of the General SS from all parts of Germany and reports of about 30 divisions, Oberkommandos, and replacement units of the Waffen SS. In addition, this affidavit is a good cross-section of the members at various camps. In accordance with the decision of the Court on 14 January, this might also be significant. The highest ranks are not represented; it is the so-called "little man" who is represented there. From a similar point of view, because this evidence of affidavits is still affecting the great mass of the SS, I ask for the hearing of the Tribunal for the 136,000 affidavits of which I have found a digest. For the evaluation of the credibility of these affidavits, the fact is important that they were taken down very early without juridical or any other explanations. The SS members comment only on one or several points which interest them the most. The fact that certain points are not mentioned in these affidavits is because the middle SS man naturally had only a limited view and was not able to judge on many subjects. As a result they could not write anything on this point.

Justice Jackson stated that the numerous affidavits of SS members were only evidence of their interest in their personal fate. But this digest is to refute that. In view of the individual, his general view is limited, and since the individual cannot testify to more than he knows, these affidavits with the viewpoint of the individual gained a great value for me, as defense counsel of the mass of the SS and not of the highest leaders assigned to them. They give a clear picture of the teachings, its training, statements and speeches of the leaders.

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Only this picture, only this cross-section shows to what extent one can speak of collective criminology in the SS, if that is at allpossible juridically. These statements are also important for the question of conspiracy.

I may point out that this digest has not yet been translated. This digest consists of various groups. First, may I mention group I briefly. It deals with the motive of volunteering for the SS. The distinction is made between joining before 1933 and after 1933 in the General SS and volunteering for the Waffen SS before 1933. Of 12,749 affidavits, 12,671 say that the motive was idealism and patriotism alone. 78 affidavits give various other motives, transfer from other units for example, eventually cavalry units were transferred into the SS cavalry , and so forth. The fact that the motive for joining after the seizure of power is commented on only by 804 men proves that people did not join from pure idealism and on a really voluntary basis to the same extent as before the 30th of January, 1933.

As for joining the Waffen SS there are only a few affidavits. Of 488 men, 406 say that the Waffen SS was select, young troops. Others say that they had to fulfil their military duties and that they preferred the Waffen SS. Many indicate that the Waffen SS considered itself a compulsory branch of the Wehrmacht. Many others indicate that they were racial Germans, and as I proved yesterday with the aid of documents, racial Germans could perform their military service only in the Waffen SS. Some reported to the Waffen SS because they wanted to be in the police service after the war.

Group II I have taken together on the question of legal compulsion for joining the General SS and drafting into the Waffen SS. 67 affidavits say that the assimilation of the police brought them to a service rank in the General S.

The rest of the other affidavits are made out by students and university teachers or members of the postal protection, the Reich Food Estate, civil service employees, Reich War Victims Care, and educators. Also honorary persons are in this group.

In view of drafting into the Waffen SS, there are 4,042 statements. 1,806 racial Germans and 1,826 transferred from other parts of the Wehrmacht or from the police, that is, ordered to the Waffen SS.

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Interesting is the question of membership in the General SS of Waffen SS members. According to these statistics there were 246 Waffen SS members who were drafted into the Waffen SS by the Wehrbezirkskommando, the district command of the normal Wehrmacht. Only one-fifth of them belonged to the General SS.

Further significant statements are, as early as 1939 Wehrbezirkskommandos were drafting men for the Waffen SS. The witness Brill has also spoken on this subject. And Wehrbezirkskommandos drafted men to guard concentration camps by drafting them into the Waffen SS.

Further, members of the Reich labor service were taken over forcibly into the Waffen SS. The concentration camps guards were supplied by the Labor Office, the so-called emergency service obligation. The Labor Office obtained the men for concentration camp guards, and they were taken over forcibly into the Waffen SS. Some other points are the forcible transfer of postal officials for the aid of the German Reich Post Office and for the SS field posts.

Group III included in its first subsection all the affidavits dealing with the knowledge which the SS members had of the intentions of their leaders --

THE PRESIDENT: Dr. Pelckmann, are you still dealing with Group I?

DR. PELCKMANN: No, your Lordship, I am on Group III.

THE PRESIDENT: Where did Group II begin?

DR. PELCKMANN: Group II began with the legal compulsion to join the General SS?

THE PRESIDENT: As far as the translation came through to me, I have taken down all the numbers you have given, and I thought they were all in group I

DR. PELCKMANN: I beg your pardon. I thought I said it. Perhaps it did not get through.

THE PRESIDENT: Now you have gotten to Group III, have you?

DR. PELCKMANN: Yes. It deals with the training which the SS members received. 55,303 SS members state that in this training they had no indication of criminal aims. It was training for character, for decency, for comradeship, and exemplary conduct of life. It is noteworthy that

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none of the SS men in connection with the training mentions Hitler's book "Mein Kampf." Statistics will prove that the mass of SS men did not read this book at all.

289 affidavits deal with the racial doctrine. 223 do not consider the training for racial hatred, for the destruction of other races, or for the creation of a master race. They see only a demand for a separation of the races from one another. 57 affidavits see in the doctrine the purpose of selecting the best among the people. Various affidavits say that the racial doctrine included respect for other peoples. The problem of colonization and Germanization is not mentioned in any affidavit as a problem of training.

Very many affidavits deal with the question of whether the General SS were trained as political soldiers. 20,010 affidavits are available on this subject. 15,461 ascribe no military character to the General SS. They give, for example, the following reasons: They never had anymilitary training in the General SS. The ranks of the General SS were not recognized in the Wehrmacht. There were no arms, so-called tactical exercises. Tactical discussions were forbidden. Shotting was only with small calibre guns. There were not enough guns. 1,053 affidavits confirm the testimony of various witnesses here that during the war, service in the General SS occurred not at all, or only in exceptional cases; at the end of the war, not at all.

On the question of psychological preparation for war, 3,304 affidavits say that they did not think of war and did not believe in war. At the Junker schools various affidavits say rejection of war was taught, since it created a so-called negative selection. And in the Verfuegungstruppe, so-called field service, a more military service was taken up only when general military service was introduced.

127 affidavits confirm that the General SS did not demand any special obedience. That is, no oath which according to its form would obligate the individual to more than in the Wehrmacht or in the civil service.

As for the training of SS men, 2,374 affidavits report. In 2,138 affidavits it is asserted that orders against humanity were not known to them and were certainly not given.

The second subsection of Group III is to answer the question of what

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the members recognized as the actual aim of the organization. The question means whether there was contradiction between the theoretical training and the actual actions of the leaders. 688 affidavits deal with the question of whether the power in Germany was to be achieved through supression of political opponents. On the question of whether the destruction of Jewry was an aim of the leaders, whether the SS members recognized this as an aim of the leaders, of the 1,637 affidavits which mention this problem, 1,593 state that the Jewish problem was not to be solved by killing, or by the so-called "final solution" and that they had no knowledge of these intentions of the leaders. They point out that the SS members were forbidden to undertake individual acts against Jews. Numerous members, for evidence, refer to the fact that numerous condemnations to death or to high penitentiary sentences were passed because of crimes against Jewish persons or Jewish property.

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Another question was whether the SS members recognized as an actual aim of the leaders, rule of Europe through war. 12, 596 affidavits say that neither statements of the SS leaders nor statements of Hitler made plain that the conquest of Europe was an aim of the SS -- an important group of Roman numeral four -- it includes affidavits on the question of the participation of the SS members in the crimes asserted in the Indictment. The first question deals with participation in the concentration camp system. 2,866 affidavits have been made out on this subject. They are mostly from guards, a few from former concentration camp inmates and a few from kitchen and workshop personnel. They deal with the treatment of the inmates and with the conduct of the guards. They only show, of course, how the guards saw the concentration camp conditions and the life of the inmates from their point of view. They give a cross-section through almost all concentration camps and labor camps. They give a unified picture of the impossibility of obtaining an insight into conditions; even for people employed near the camps, they give a unified picture of the degree of ignorance of the picture in the camp and also the reasons for this; namely, the order for extreme secrecy. 2,385 affidavits say that instructions were constantly given about the conduct of the guards; examples are given for disobedience of these rules, especially for mistreatment. Significant is the statement in many affidavits that the relationship between the guards and the command personnel was not only cool but even tense. Prisoners themselves, whose affidavits are presented, state that the great responsibility for the conditions belongs to the Kapos and the prisoners themselves who were often criminals. The question of the participation of the SS members in so-called mass exterminations in extermination camps, which are to be distinguished from the concentration camps, is not mentioned at all in the affidavits. We have heard from various witnesses that these camps had quite a special life and only a few SS or men in SS uniforms were stationed there.

Now, I come to another point. A cross-section through all well-known divisions of the Waffen SS is given by 8,242 affidavits and on the question of illegal treatment of prisoners of war, 4,306 concern constant instruction on correct conduct before action. Affidavits give examples of especially good

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treatment of prisoners of war. 13,613 affidavits deal with the question of the civilian population in the Occupied Territories contrary to international law; there were no orders to do so. Constant instructions about correct conduct were given. The mass of SS members can report only of good relations with the civilian population in the Occupied Territories. In no affidavit is the participation of the SS in resettlement or in deportation for slave labor mentioned. A few statements say that labor commitment was not an affair of the SS. Only a very few affidavits touch biological experiments. They come from men who were in the concentration camp system. These few say that they had heard that the prisoners volunteered for experiments. 1,271 affidavits deal with the so-called Roehm Putsch. The General SS did not participate in these events; parts of them had been alerted but not armed and not employed on the 9th of November 1938. 4,407 affidavits form a cross-section of various units of the SS Abschnitte and Standarten of the SS in almost all cities of Germany and all districts. It said with special emphasis that the SS did not participate in these excesses.

THE PRESIDENT: Dr. Pelckmann, I suppose what you are doing is reading out your summary of these 136,000 affidavits; is that right?

DR. PELCKMANN: Yes. Your Lordship --

THE PRESIDENT: I asked you whether you were reading it out verbatim.

DR. PELCKMANN: As soon as the translation is available it will be presented.

THE PRESIDENT: That is not an answer to my question. I asked you whether you were reading it out verbatim.

DR. PELCKMANN: No, I am only giving a resume, your Lordship.

THE PRESIDENT: Well, I think we better adjourn now.

(A recess was taken.)

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DR. PELCKMANN; Your Lordship, I regret very much that the translation of the summary is not at hand. I am sure that the understanding and the grouping of this material would be considerably facilitated if the translation were at hand.

The group Roman Numeral Five, deals with the statement of the general ignorance of the bulk of the SS membership. 96,252 affidavits are at our disposal. They tell us that the majority of the members of the SS knew nothing about the crimes before the capitulation. They say that in general, and they make the statements in particular as well as when they deal with the various patterns of crimes concerned. One fact is especially significant in this connection and is being emphasized particularly. At the time when these crimes assumed larger scope, that is, namely during the war, the mass of the SS membership was fighting at the front; and for that reason alone, could not have any knowledge or receive any knowledge of incidents of that sort, for the horizon, the point of view, of the man at the front is, of course, limited.

The next group is Group Six. It deals with the assertion made by the Prosecution that the SS had been a unity. The first question reads whether the branch organizations formed an actual unit. 5,700 affidavits deal with this question. One half shows that knowledge was lacking for the banding together for the carrying through of the conspiracy. The other half refers to the fact that the Waffen SS was not basically recruited from the General SS. Therefore, it emphasizes the separation between the General SS. Therefore, it emphasizes the separation between the General SS and the Waffen SS. The second question reads whether the members of the various branch organizations knew of the activities carried out and carried on by the other branches. The significance of the question could not be recognized by the members of the SSwithout some explanation being given, and therefore few of the affidavits deal with this question. Those few affidavits that we have concerning that activity of the various main offices of the SS was set up separately and that a union of personnel existed only in the person of Himmler himself.

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Several affidavits refer to the fact that, for instance, and we are concerned with the manning of the concentration camps, these men were made up of the most various groups and components. Many affidavits emphasize the state of secrecy which had been decreed and resulted from the Fuehrer Decree Number One which has been quoted frequently, and also it came about because of special directives. And orientation of the various branches among the SS were quite out of the question because of these directions and directives. In the other part of the affidavit it is said that the General SS, on one hand, and the police and the SD on the other hand, did not form a joint body or a unit.

Very informative are the affidavits which deal with the components of the Leibstandarte, 1934. Less than 10 percent of the members of this Liebstandarte were at the same time members of the General SS. A large part of this affidavit concerns itself with stating that during the war, practically speaking, the General SS did not exist. 342 affidavits deal with numerous affiliated groups or branches of the SS. In fact, they exercised special expert activities which were very, very much restricted. As far as the carrying through of the alleged SS activities, they were not concerned and had only a loose connection with the General SS. Among these groups we find the SS mounted units, the Reiter Stuerme, Reiter units which devoted themselves to riding motor units, SS female helpers, who were the the same as the Wehrmacht. Helpers were used during the war in intelligence and information service. The SS sport organizations, the Lebensborn, the medical units, or first aid, front units of the German Reichspost, and so forth.

Affidavit, Group Roman Numeral Seven deals with the question of what the attitude of the SS was toward the Church. 3,174 affidavits are on hand in this matter which, on the basis of their positive statements, conclude that according to their conviction, a persecution of the church by the SS leadership was not wanted.

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Under VIII there are 128 affidavits grouped together which testify to the fact that many offices under Himmler had no connection with the SS and, further, that between Himmler and the SS, and especially in the course of the war, an estrangement had arisen.

Under IX 435 affidavits are summarized. They deal with thedehavior of our enemies during the war and after the capitulation. These affidavits, based on the experiences of the SS men, contain statements about actions contrary to international law which the enemy perpetrated in combat. Names of places are given, as are theatres of war, nationality of the enemy, and the kind of excesses that took place. The enumeration is intended to show that excesses of this kind can hardly be prevented during war and that for that reason you can not conclude that a system is present. They serve the purpose of showing that the German troops and especially the Waffen SS, if they are confronted with isolated cases of violations of international law which the affidavits say in part were punished, they cannot be charged with having acted according to or under a system.

The last group is X. It contains 57 affidavits which reproduce the factual personal impressions of foreigners about the SS. From the recognition given by these foreigners, which was known within the SS, the individual SS man concluded that the total behavior of the SS could not be criminal and that the activity was not objected to by general world opinion. Various personalities are mentioned.

On the basis of certain incidents, the opinions of Americans, Englishmen and Russians are given, such as Daladier, Chamberlain, Lord Rothermere, and Chaim Weitzmann, and others.

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Finally, I should like to submit, without going into a detailed explanation, a statistical record, set up on the basis of a circular.

With that, My Lord, I have concluded the submission of affidavits and documents.

THE PRESIDENT : Are you next, Dr. Laternser?

DR. LATERNSER (Counsel for the General Staff and the OKW) : First of all, I should like to submit the list of those 14 witnesses whose testimony I expect to use, as well as the transcripts dealing with their interrogations.

Moreover, I have a complete list of the affidavits submitted to the Commissions, and I have submitted this list. It is contained in one volume, which has been placed before the High Tribunal in an English translation. It is the list which has been mentioned this morning by the President. I have supplied this list with an index, and I have set up the various branches according to subject matter. The number of the affidavit is given, as are the name of the deponent and a brief description of the contents of the affidavit. In this way, it is rather comprehensive and, in my opinion, especially valuable.

The circle of persons accused is the structure of the highest Wehrmacht leadership. For this purpose I should like to submit document Mil. No. 2, which you will find on pages 12 and 17 of the first volume. From the diagram on page 13 we can see the actual method of subordination as it obtained in the highest Wehrmacht leadership. The submission of this document is required for my refutation of the draft submitted by the Prosecution. USA Exhibit 531 and 532 have been submitted by the Prosecution. and are not correct in various points and have led again and aga to misunderstandings.

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On the jurisdiction and competence as far as the conduc of the war is concerned, I should like to submit Document Hil. 3. This contains a rather large diagram.

THE PRESIDENT : Are you dealing with the one on page 137. Oh, the bigger one. Is it the same thing as page 13?

DR. LATERNSER : No, My Lord, the diagram on page 13 shows the structure, and in that way I should like to show the restriction of responsibility between the military leaders and th other organs for the conduct of the war. From this diagram we see first of all, that the military leadership is separated, and responsibility has to be placed on the military leadership as distinct from the political leadership which was headed by Hitler and his various agencies. You will find the markings in blue for the military leaders, and the sphere of the ideological and political leadership is marked in red.

The diagram shows also the distribution of command and hence, of responsibility be[illegible]en military and political leaders. The factual distribution is shown in the tasks which the militar leaders had ans is marked in red, and this diagram further shows what tasks, even though they were in the spheres of the military leaders, were carried through under the responsibility of other agencies and offices. In this way, we see an undermining of the authority of the military leaders in the operational zones and a distribution of authority according to areas, and therewith, a distribution of responsibility. That is another thing which may be seen from this diagram. Only the clearly defined operational areas were under the jurisdiction of the military leaders, and only for the time the operations obtained. In all other cases, the executive power was purely and solely in the hands of the political leadership, and these functions are indicated in red.

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Just one more remark in connection with this diagram : The areas outlined in black and dealing with the responsibility of the Wehrmacht commanders in chief do not involve the circle of people accused, for they do not fall under the sphere of the Indictment.

In this connection, the authenticity of the diagram is affirmed and sworn to by General Winter of the Wehrmachts Fuehrungsstab-- the Wehrmacht Operational Staff.

Since I have given the structure of the Wehrmacht leadership as a basic step, I shall turn to the circle of persons and its composition.

THE PRESIDENT : Dr. Laternser, the Tribunal would like to know whether there are three colors indicated in this diagram; namely, blue for the armed forces, red for the political forces, and an indiscriminate color a mixture of red and blue and black-- for an indetermined body which is half political and half military.

DR. LATERNSER : Yes, Mr. President, that is quite true. The third color is supposed to be black, and these areas indicatedin black show the areas of the Wehrmacht and military commanders in chief. They are not men who had their commands at the front, but rather commanders in chief who had a certain territorial power, and I added that this kind of commander in chief, such as is indicated in black, does not fall under the circle of persons accused.

THE PRESIDENT : Do you mean that in what you call black are included the static military commands, non operational? There is nothing political in the black?

DR. LATERNSER : No. But, Mr. President, those who had this power of command do not fall into the circle of people who are accused under the Indictment.

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As far as the circle of persons is concerned, the Prosecution has set up USA Document Number 778. This may be found on Page 25 of my document book. This list comprises 129 persons. I should like to submit Document Mil 4 in which three tables are shown. These tables are set up in accordance with USA 778.

First of all, turn to Chart 1. From this chart we can see first of all that on the first of March, 1933, only one of theleaders indicted was in a high position.

Point 2. On the first of March, 1938, there were only 70.

Point 3. On the first of September, 1939, that is at the outbreak of the war, there were 22.

Point 4. This is an important point as may be seen from Column 8. In November of 1934, thetopfigure was reached.

Point 5. Only 9 generals and admirals during the entire war were in one of the positions indicated.

Chart 2 is found on Page 25. It is a graphic presentation dealing with the duration of membership with the so-called group General Staff and OKW. You can see from column 2 to 5 that a long membership was something very special. You can see from column 9 that the top figure of 21 had a position for only 2½ years. But, in total, they had 61 people for a period of less than one year.

This figure of 61 may be seen or is gathered from the additions of columns 1 to 18, and Chart 3 found on page 26 of the document book shows, especially through column 4 and 5 that out of 129 generals and admirals, 100 served for less than two years in high positions. That is the large majority of the military leaders involved.

I should like to submit document Mil. 6. It is foundon pages 27 to 33 of my Document Book 1. This document comprises a list of names of the various leaders involved. From this list we can see just how many of the military leaders at the time when important events took place were in important positions.

Then from page 27 and 29, you will see that first of all, on the first of March, 1933, that is at the time when the change in power took place, there was one general.

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Point 2, on the fifth of February, 1938, which is a very important date in the indictment against the military personnel, there were only 6 generals.

On the first of September, 1939, there were 23 generals. Those men were in their respective positions. I must remark that above all it is remarkable that on the first of November, 1944, is when we were, in the main, concerned with the defense of our boundaries. The highest membership in this group was reached. In this case, we have 49 generals involved.

With document Mil. 7, a copy of which is found on pages 34 to 40, of Document Book 1, I should like to give you a different perspective of the people involved. The list on pages 36 to 40 shows the membership to the alleged group during certain periods and intervals. From the first column, we can see that before June of 1941, 33 generals had been placed in positions which the indictment covers. Only 21 of that group are still alive. Up until the fall of Stalingrad on February, 1943, that is in theperiod where offenses were still being carried out, 27 more generals were put into such positions as are covered by the indictment. From February, 1943, until the end of the war was theperiod of time in which strategic defensive --

THE PRESIDENT: You said something about only a certain number of them being alive. That is not shown by the chart, is it?

DR. LATERNSER: That will be seen from a later chart to which I will later refer. I was just saying that in the last period from February, 1943, onward, until the end of the war, an additional 69 military leaders have been placed in the position of coming under the indictment. With this document I should like to prove, first of all, that out of the 129 officers indicted, only 33, that is 25 per cent participated in the preparation of war, and were the only ones who could have done so.

Point 2, 69 generals, which is more than 50 percent of the group involved, cannot have participated in plans of aggression.

Point 3, 40 generals, which is 30 per cent, were only taken into the positions which are now under indictment when we were only concerned with the defense of our boundaries.

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From page 35, you will be able to see that out of 129 generals, 80 had formerly been members of the General Staff. However, 49 of them had not belonged to this party. I shall now turn to Document Mil. 8 which may be found on pages 41 to 48 of my document book Number 1. Through this document I should like to prove different and various things to the High Tribunal. First of all from the first three columns of list 3, which are found on pages 43 to 48, you will be able to see the number of dead, the number of those who are indicted invididually or have been indicted, and you can see the numberof those officers who were only charged with the leadershipor the command of an army, and therefore, did not hold a position which exclusively falls under the indictment. The sum total of these three columns gives you the total figure of 56 which is set down on page 41, and in this way the number of 129 is reduced. And all the ramifications of a sentence could only concern itself with 73 people.

The last two columns of my list gives the number of those officers who before the end of the war had been relieved of their positions either through an order, death, or because he was captured.

Seventy admirals and generals make up this number out of the total figure of 129. And in this connection --

THE PRESIDENT: I do not think it very much matters, but the last column which contains the reason does not seem to be in accord with the evidence which has been given us up to date. Perhaps it is a mis-translation. I do not know.

DR. LATERNSER: Mr. President, I shall explain these two columns further and tell the High Tribunal what is meant. I intend to put this explanationto the High Tribunal. I wanted to call the attention of the High Tribunal to the fact that we may see from the last two columns that 36 generals because of serious differences of opinion with Hitler and in part because of active resistance against Hitler were removed from their positions.

THE PRESIDENT: All I wish to say is that no such suggestion was made to Fieldmarshal von Brauchitsch when he was in the witness box.

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DR. LATERNSER: Mr. President, I do believe that I can remember that serious differences of opinion between him and Hitler were mentioned by him.

THE PRESIDENT: It is an English word and it seems to be highly inappropriate. Go on.

DR. LATERNSER: In this figure, of 36 generals who were removed from their positions because of differences of opinion, as may be seen from the list, General-Oberst Hoeppner is found in the same list.

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THE PRESIDENT: Dr. Laternser, I see that the same word is applied to the defendant Raeder, and my observation equally applies to him.

I said, my observation applies equally to him.

DR. LATERNSER: Mr. President, may I please deal with this matter briefly once more after the recess?

THE PRESIDENT: Certainly, Dr. Laternser. You can go on now.

DR. LATERNSER: I have just referred to the fact that in this list the name of General Hoeppner is mentioned, who, because of his participation on the 20th of July, had been sentenced to death. That may be seen from the last two columns, and I wanted to call the attention of the High Tribunal in this connection to the fact that this is the same general who, in the opinion of the author of Document 180, allegedly had a very close collaboration with Einsatzgruppe A.

Now I should like to submit Document Mil 9, which will be found on Pages 49 to 54 of the Document Book No. 1. I should like to refer only to the point that from this list we can see the names of those 31 officers who served less than six months in the positions which are included in the indictment. Most of these officers, as may be seen from this list as well, had not been appointed commanders in chief (Oberbefehlshaber), but they had been charged with the carrying on of affairs.

Now I shall turn to Document Mil 10. I should like to call the attention of the High Tribunal to this document. It will be found on Pages 55 to 61 of Document Book No. 1. From this document the High Tribunal will be in a position to see which ranks were held by the officers indicted at the time that various incidents took place, for instance, at the outbreak of the war. This compilation, therefore, permits of certain conclusions showing how far these officers had a decisive influence on the incidents.

The first column of List 5 on Pages 58 to 61 can be determined. The result will be found on Page 55 under Figure 1. On the 1st of September 1939 -- that is, at the beginning of the war -- of a total of 107 officers who were still living, a total of 47 still had the rank of staff officers. They were majors or colonels, or thereabouts. A total of 48 were generals of a lower rank. And of this entire 107 who are involved in the indictment, only seven had the top ranks. Five were full generals, and there were two

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field marshals. For five of them who are still alive we do not have any definite information.

As far as the other summaries are concerned, dealing with earlier incidents figured out on Pages 66 to 73, I should like only to call to your attention to how this alleged group was composed. The permanent deputies of the Wehrmacht Staff, accord ng to Affidavit No. 6 of Halder, USA 533, are all grouped together by the Prosecution. I should like to call your attention to the tasks and the significance of the decision of the cross-examination of Halder before the Commission on Page 3309 of the record. According to this, the incumbence of this position did not concern itself with the case in question and the deposition did not in any way correspond with the positions which are included in the indictment. In that way I shall have concluded my evidence dealing with the group as it was made up.

The Prosecution is of the opinion that the circle of people as indicted consisted of a group in the nature of an organization. The affidavits submitted by the Prosecution to prove this point, No.1 of Colonel General Halder, USA Exhibit 531, and No.2, by Field Marshal von Brauchitsch, USA Exhibit 532, did not have the meaning indicated to us by the Prosecution. In this connection, I should like to refer first of all to the cross-examination which I conducted of Colonel General Halder before the Commission, and I should like to ask the High Tribunal that one passage may be read by me from this record so that this point will be complete in the record.

On Page 3298 you will find the following statement:

"BY DR. LATERNSER:

"Q In Your affidavit No.1 you have used the word Group four times. Did this expression Group emanate from you?

"A No; it was contained in the text, which has been changed several times, in which I left this word.

"Q Had you used this expression 'Group' in a similar connection previously, in that you characterizedthe military leaders as a group?

"A No.

"Q What sense did you impute to this word 'Group' at the moment when you signed the statement?

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"A When I used this word 'Group', I did not especially consider the concept of its being used for a number.

"Q You therefore mean several generals? Or did you mean a certain circle of people who had been grouped for a certain purpose?

"A A number of generals who perhaps might be characterized as leading generals.

"Q Subsequently the Prosecution is now interpreting this expression 'Group' as if an organization of military leaders existed. Was there an organization, or an organized group, like that?

"A No."

Field Marshal von Brauchitsch was examined by me before this High Tribunal with regard to Affidavit No.2, about the fact that the front commanders in chief were actually the consulting body for the High Command. The Prosecution has quoted USA Exhibit 537, affidavit No.5, by General Blaskowitz. I should like to refer to the affidavit which has been translated, General Staff No.55, in which Colonel General Blaskowitz, on my request, gives an interpretation of the affidavit. According to this affidavit which he gave me, the Ober-Befehlshabers, the commanders-in-chief, were not a consultant body, but they were individual consultants in their own sphere, as is true in every army. The significance and the interpretation which the Prosecution gives to Affidavit No.5 is, according to that, not correct.

I further should like to refer to Affidavit No.1255, which also proves that the highest military centers did not form an organizationa-like group. I should like to have you give your special attention to Affidavits 1 to 4 which have been translated, but which I do not wish to quote.

That the navy and the air forces did not form a group with the army may be seen from Affidavits Nos. 3145, 12 and 3097. Schniewind, Stumpf and Koller deposed these affidavits. And particularly from the affidavit No.3145 of Admiral Schniewind, the High Tribunal can see only those points which applied to the commanders-in-chief of the navy, and form an opinion of them.

I should also like to refer to the testimony of all the generals who were heard before the Commission, who, to a man, all denied the existence of a group. And especially important, it seems to me, is the testimony of General von Butlar, which on Pages 11, 285 and 286 of the English text of the official

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record testified concerning how nominations were carried out to those positions which are covered by the indictment.

Mr. President, in this way I should like to conclude my evidence on the question of whether a group actually existed or not.

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Now I shall turn, but briefly, to my proof dealing with the general attitude of the generals involved.

The rather general attitude as alleged in the opening speech given by Mr. Justice Jackson rests on rather unsure ground. Document 1947 was referred to by Mr. Jackson in this connection. This document, 1947-PS, which is of basic significance to his statement, an alleged letter of Colonel General von Fritsch is mentioned that he is supposed to have written on 11 December, 1938 to Baroness Schutzbar-Milching and in which he allegedly is supposed to have said that three battles would have to be won; first, against the workers; second, against the Catholics and third, against the Jews.

Despite several demand I received neither the original nor a photostatic copy of this document. I was told that I would have access to it if and when it could be found.

I should like to refer in my refutation to the affidavit deposed by Baroness Schutzbar-Milchling, who in her affidavit states that the alleged letter by Colonel General von Fritsch was never received by her.

If the document 1947-PS cannot be submitted even at the end of this proceeding -- I should like to emphasize it has not been submitted but it has been used up to now -- then, and this is something which I especially would like to apply for, that part of the opening speech by Mr. Justice Jackson should be struck from the record, that is that part which refers to this document which after all has not been submitted.

THE PRESIDENT: If the document has not been proved the Tribunal will pay no attention to it. If it is not in evidence then it is quite unnecessary to produce the document denying its existence. We will take no notice of it.

What I understand you to be saying is that Mr. Justice Jackson referred to a letter. That letter has not been offered in evidence. If it has not been offered in evidence then the Tribunal takes no notice of anything Mr. Justice Jackson said

about it in his speech and it is unnecessary for you to produce an affidavit denying the existence of the letter. Is that clear?

DR. LATERNSER: Yes, but, Mr. President, it has been used. Mr. Justice Jackson --

THE PRESIDENT: Well, you have pointed out to us now that it ought not to have been used because it is not in evidence. We wish to be strict in these matters and only to allow factual documents to be referred to which have been offered in evidence.

DR. LATERNSER: Dealing with the mistrust which Hitler brought to the military leadership, that is a matter which has been stated and proven several times in this proceeding.

I should like to refer the Tribunal to affidavit number 200, deposed by Lt. General Engel, an officer who was in the closest proximity of Hitler and could observe the increasingly strong mistrust on the part of Hitler. I will not read from that affidavit.

In this connection I should also like to refer to affidavit number 3182, deposed by General Warlimont, who reproduces statements made by Hitler and in order to be brief I shall merely refer to those matters.

Regarding the attitude held by the military leaders to the party and its methods, I should like to refer only to affidavit 175, which has been translated and I would like to refer to it as an example. The officer who at that time was competent, Major General Seegers, describes the battle waged by the military against the removal of Jewish officers and I should further like to refer to the contents of the affidavits 160 to 177, from which many particulars dealing with the unpolitical attitude taken by the military leadership may be seen.

Dealing with the question of rearmament, I should like to refer to affidavit number 126, in which General Berlin testifies that the General Staff struck out matters dealing with heavy artillery, with the statement that Germany did not want to wage aggressive wars.

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I should like to refer further to affidavit number 127, deposed by Major General Hossolbach, and from which it may be seen that at the beginning of the war the equipment and weapons were not on hand in full strength to correspond with the units set up for mobilization. As far as the rest of the contents of this document is concerned, I shall merely refer your attention to it.

Dealing with rearmament in the Luftwaffe, the Prosecution submitted document 143, GB 23. From this document allegedly the intentions of the Luftwaffe are to be seen. I should like to refer to the contents of affidavit 101 of the then Chief of the Colonel General Staff Stumpf who expressly testifies

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that this was a private organizational study set up by General Kammhuber. As far as the contents are concerned, I should like to refer to affidavit 102 to 152. Through details of the most various sort we can see that on the part of the military leadership, as far as the carrying through of rearmament is concerned, aggressive wars were not seriously considered.

I should further like to refer to the contents of the affidavits 181 to 205, from which we can see, as is corroborated by many details, that German officers participated in certain manoeuvres; that the situation was always marshalled but for defense and that the war college which existed for the training of general staff officers had a training course which dealt almost exclusively with matters of defense.

As far as the deliberate participation of the military leaders in wars of aggression is concerned, the Prosecution has been trying to prove that the military leaders in plenty of time had been advised and informed of Hitler's plans and in this connection they produced the Hoszbach document of 5 November, number 3686-PS, USA 25. I should like to refer to the affidavit of the author of this record, General Hoszbach, dealing with the background and the origin of this document.

General Hoszbach in his affidavit, 210, which he sent to me, expressly states that he did not take notes at the conference and that he wrote down this document several days later. This document has been translated.

THE PRESIDENT : Does it say in this affidavit whether he was shown a copy of the notes or whether he had any comments to make on them?

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DR. LATERNSER : Mr. President, I must state quite frankly that I cannot give you this information because of the wealth of material on hand in any event I would have asked for a recess at this point. I shall check on these matters and I shall be able to tell the Tribunal after lunch. I should like to make a few condensations which I am sure will be very profitable.

THE PRESIDENT : Very well.

(A recess was taken until 1400 hours.)

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AFTERNOON SESSION

(The afternoon session reconvened at 1400 hours, August 21, 1946.)

DR. SERVATIUS: Mr. President, may I say something about the speeches of the organizations? I hand over a list after a brief consultation with my colleagues. The political leaders and Gestapo speak on Thursday or Friday.

THE PRESIDENT: Yes.

DR. SERVATIUS: And Monday, SS, SD; Tuesday, General Staff, Reich Cabinet; and Wednesday, the SA. In the second column I have indicated when these documents can be turned in for translation; and in the last column I have given the time when the speeches could presumably be held. If there is no session on Saturday, Friday could be filled with the speeches for the political leaders and the Gestapo.

THE PRESIDENT: You mean Friday this week?

DR. SERVATIUS: Yes.

THE PRESIDENT: Friday of this week could be taken up with the political leaders?

DR. SERVATIUS: Yes, and in the afternoon the Gestapo. If there is no session on Saturday, the SS could begin on Monday so that there will be no interruption. This difficulty is in the translation division, whether it will keep up with this tempo.

THE PRESIDENT: I suppose that the difficulty in the translating division is partly due to their having nothing to translate.

DR. LATERNSER: Mr. President, the Court wanted information as to whether on the basis of the Hoszbach documents orientation took place. As to the document, it shows Hoszbach told Hitler of the existence of this record and gave it to him twice to read; but Hitler refused. General Hoszbach does not recall whether he presented the record to Generaloberst von Fritsch; but he certainly did give it to Beck. He then says further that this record was not signed by the participants in the conference.

THE PRESIDENT: It wasinitialed by Blomberg, I see he says.

DR. LATERNSER: Yes, initialed but not signed. May I continue, Mr. President?

THE PRESIDENT: Certainly, certainly.

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DR. LATERNSER: From the Affidavits 213 A, B, and C, it is shown that the most important agencies were not informed of this conference on the 5th of November, 1927. Numerous officers discussed this group and that equipment and training of the Wehrmacht made impossible any thought of the war of aggression which is shown in Affidavit 223 to 225, 220 and 277. The contradictory judgment of the situation by the Wehrmacht, on the one hand, and Hitler on the other hand was in Affidavit 211. Field Marshall von Weichst, in Affidavit 215, weakens the opinion of Field Marshall von Blomberg in his Affidavit 3, USA Exhibit 536. Field Marshall Sperrle wasin Affidavit 237 and 237-A, in which he reports that he and Reichenau did not know the purpose of their visit to the Berghof at the Schuschnigg conference in February, 1938. Only later did Hitler comment on this event.

The surprising order to march into Austria caused the troops to improvise, as is shown by Affidavits 238 to 242. The same is true of the occupation of the rest of Czechoslovakia, Affidavits 246 to 252 and 254. General Warlimont in Affidavit 217 states that up to the day of the attack on Poland a peaceful settlement of the dissension had been expected. The same is shown by Affidavits 227, 246 and 255 to 257. As concerning statements of Hitler which confirm his generals in these opinions, there are statements 219, 211, 212 and particularly 277. The surprise which the order to march against Poland caused is shown from Affidavits 228 to 231, as well as 255, 256 and 257.

In July 1939, Grand Admiral Raeder had told the Navy that the political leaders had assured him clearly that in the next few years there would be no hostilities. That is shown by Affidavit 315 of Rear Admiral Katzenberg. The German battleship Gneisenau at the beginning of the war had written orders that no hostilities were to be expected. It was on a training trip at the Canary Islands.

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That is shown from the statement of Admiral Forste, number 3114.

According to Admiral Backenkoehler, in affidavit 3116, as a result of inadequate production preparations, in August of 1940, there was a lack of torpedoes for the slight number of U-boats which were available at that time.

Only a few officers learned of the preparations for the Norwegian campaign. This is shown by affidavit 259, and from statements in 263, 264, 266, 267, abd 269. These affidavits show statements of Hitler's that he did not want to rish a war on two fronts. Unfortunately, owing to lack of time, I cannot quote the exhaustive material.

In regard to the Russian campaign, I must limit myself to brief references. According to the reports available, which were given to the generals, it was presented as a preventive war. This is shown from affidavit 270-A and 270-M, as well as from 271, 272, 274, and 275.

I wish to refer to document 1014, at pages 83 to 96 in my document book. The reference is sufficient.

I now turn to the evidence on individual points, which I shall present in the following order.

1. Connections with Einsatzgruppen.
". Commissar Order.
3. Partisan warfare.
4. Treatment of prisoners.
5. Destruction.
6. Treatment of civilian population.
7. Jurisdiction in the East.
8. The Commando Order.
9. Deportation of laborers.
10. Crimes against rules of warfare and against humanity.

First, the Einsatzgruppen.

The prosecution contends that the Einsatzgruppen were, in every respect, under the command of the Commander-in-Chief, and has referred to:

1. The testimony of Ohlendorf,

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2. The testimony of Schellenberg.

3. Document L-180.

4. Affidavit 16 of General Roettiger.

5. Affidavit 18 or SS Fuehrer Rodo.

I shall now present to the Court that these proofs of the prosecution are not conclusive. I shall offer a counter-proof that the alleged relations did not exist and that the crimes committed by the Einsatzgruppen cannot be charged against the persons represented by me.

First, concerning the testimony of Ohlendorf, I refer to affidavits 703 and 703-A of General Woehler, which have been translated, and which refute the testimony of Ohlendorf on the points of the charge. I should like to call the attention of the Court particularly to the fact that General Woehler at that time was Chief of Staff of the 11th Army. The witness Ohlendorf is alleged to have negotiated with him in the sense of the charge. The affidavits of General Woehler completely refute the testimony of Ohlendorf.

Second, I refer to affidavit number 12, submitted by the prosecution, of the witness Schellenberg, USA Exhibit 557. I should like to call the attention of the Court to this fact, that it is based on an assumption. I cross-examined the witness Schellenberg before the Commission, which this Court will find on pages 3524 to 3554 of the Commission transcript. I should like to ask expressly that the Court refer to this, because this cross-examination shows that the witness was not in a position to give facts on which he could base his assumptions.

Schellenberg asserts that an agreement between General Wagner and SS Fuehrer Heydrich existed whereby the Einsatzgruppen in the operational area were completely under theCommander-in-Chief.

As evidence to the contrary, I submit affidavit 704 of Judge Mantel, concerning General Wagner, who lost his life in connection with the 20th of July, 1944. The Judge spoke with him about this point and received a clear statement that the Einsatzgruppen were not under the military command but only under the Reichsfuehrer SS.

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In this connection I refer to document 447-PS, submitted by the prosecution, at pages 99 and 100 of my document book 1. Under the number 2-b, it is shown clearly that the Reichsfuehrer SS -- that is, Himmler -- in the operational area of the Army, had special assignments; and, in connection with this assignment, he operated independently and on his own responsibility. That is shown at pages 99 and 100 of my document book, in a document which the prosecution itself submitted.

The witness Schellenberg, in affidavit 12, mentions the close cooperation of Panzergruppe IV, under Generaloberst Hoeppner, with the Einsatzgruppen. I should like to call the special attention of the Court to the way in which the testimony of this point came about. During his examination by the prosecution, the report of Einsatzgruppe A was handed to the witness. From this report the witness Schellenberg got this close cooperation for his own knowledge, and then used this knowledge in his affidavit. For this reason I should like to quote a part of the cross-examination before the Commission.

THE PRESIDENT: Dr. Laternser, what you are now doing is argument, is it not? We don't want to hear argument at this stage. I mean, you are referring us now to the case of the prosecution, and you are arguing upon the affidavits which you are producing, that they are satisfactory answers to the prosecution. Well, that is not necessary now.

DR. LATERNSER: I believe, Mr. President, I was misunderstood. I am contrasting assertions of the prosecution with proofs of the defense, so that the Court may see the reason why I am presenting this evidence.

THE PRESIDENT: You have done that already, and you have done it, if I may say so, very satisfactorily. You have given us ten different categories of these individual points, and you are now drawing our attention to your evidence which deals with the Einsatzgruppen. Well, that is all we need; we don't need to have references or argument, at any rate, upon the prosecution's evidence with reference to Einsatzgruppen. If you would continue to give us the references to your affidavits which deal with the Einsatzgruppen, that will be sufficient for us.

DR. LATERNSER: Mr. President, I regret that I must say one more thing,

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but I must give evidence; in weakening the prosecution's evidence, I must give evidence to the contrary. In this case I want to show the Court that the affidavit of the Witness Schellenberg -- which was presented by the prosecution and in which the witness speaks of the particularly close cooperation between the Einsatzgruppen and Hoeppner -- I want to show that that was within the knowledge of Schellenberg.

THE PRESIDENT: I quite understand that. I have got down here that Ohlendorf and Schellenberg are the witnesses for the prosecution who state that the High Command was concerned with and actually commanded the Einsatzgruppen. That is a fact you are contesting, and you are referring us to the evidence which you say contests it. You don't want to give us the prosecution's evidence. You have told us what it is: Ohlendorf, Schellenberg and L-180.

Will you continue?

DR. LATERNSER: May I quote a brief passage from the testimony of Schellenberg?

THE PRESIDENT: No.

DR. LATERNSER: That is evidence, Mr. President, which I brought out before the Commission, and now I just want to present it to the Court via a short quotation.

THE PRESIDENT: But, you see, that comes as argument; it isn't a mere comment. We want to confine it to a mere comment so that you may explain your evidence. Once you begin to comment upon the evidence of the prosecution, in the opinion of the Tribunal it becomes argument.

Well, you may refer to this passage if you can do so shortly; it is suggested that it is your evidence.

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DR. FELCKMANN: It is very brief.

"Q You have no misgivings to used documents which have just been given to you in your testimony?

"A Dr. Laternser, what do you mean by used?

"Q You made this report the subject of your testimony?

"A Yes, under oath. I had to comment on it."

With this quotation I merely want to prove that the knowledge of witness Schellenberg on this point was not his own knowledge. The witness then, in his affidavit 12, said that he reached the conclusion that in the Wagner-Heydrich conference the further activities of the Einsatzgruppen of the planned mass exterminations were presumably discussed and established. To this point I want to refer you to the cross examination, pages 33 to 33, 33 to 34, and 35 to 36. It is quite clearly shown there that the witness Schellenberg is under the assumption that Wagner and Heydrich in this discussion planned the mass exterminations; that he formed this assumption only in the year 1935.

The witness Schellenberg then says that in June 1941 he attended an I.C. conference which lasted several days, and that he was present only at one of these conferences. He then says, in his affidavit, that presumably, in the following discussions, the intended mass exterminations were announced to the I.C. officers. Also, in this affidavit he adds the further assumption that the commanders-in-chief were informed through these presumably informed I.C. officers. I can now prove to the court that both assumptions which Schellenberg stressed are in contradiction to the truth.

I present to the Court the affidavits 701 and 701-A, which are available in translation. In affidavit 701 a participant at this IC conference, it is General von Gersdorff, says that planned mass exterminations were not mentioned and the same fact is concerned with in General von Kleikamp's statement which is also given under oath. In cross examination I showed one of these affidavits to Schellenberg and I questioned him as follows, I quote from page 3552. That is one of the few quotations which I should like to make because of its importance.

THE PRESIDENT: What is that you refer to? Cross examination before

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the Court?

DR. PEICKMANN: Yes.

THE PRESIDENT: Before the Tribunal or what?

DR. PEICKMANN: Before the Commission, Mr. President. I shall dispense with reading it. I only refer the Court to page 3552 of the transcript before the Commission which is in special connection with this point.

Affidavit 16 of General Roettiger, USA Exhibit 560. As the cross examination before the Commission can no longer be used by the Prosecution in the sense desired by them, I shall not quote it although I would like to quote it, and refer the Court to pages 3318 and 3324. In regard to the testimony of SS Fuehrer Rode, USA Exhibit 563, whom I unfortunately could not cross examine, I point out that the witness himself begins with the words "As far as I know the Einsatzgruppen were completely subordinate." As counter evidence I have 52 affidavits on this point, numbers 701 to 752. Affidavits 704, 705, 707, 710 to 752 make it completely clear that there was never any subordination of the Einsatzgruppen.

Affidavit 706 in addition shows that Field Marshal von Kleist, as commander of an Army Group, on a mere rumor that Jews were being murdered, immediately took steps, calling the Higher SS and Police Chief to him and telling him that he would not permit excesses against the Jews. This SS Fuehrer assured him that no excesses against the Jews took place, and that he had no orders to that effect. I refer the Court to affidavit 709 which indicates that General of the Panzer Troops, Freiherr von Schweppenberg, when a leader of an Einsatz Commando came to him and said that he was entrusted with the political matters, immediately had him removed from the operational area.

I refer now to 712-A of General von Knobelsdorf, who had an SD Fuehrer arrested because he wanted to have 50 to 60 Jews shot who, according to the statements of confidential agents, were anti-German and had the intention of clearing up acts of sabotage against the German troops. In this connection one piece of evidence seems of special importance; that is affidavit 16370 of General Kittel. According to this affidavit, a national

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German in the area of Marinka, because of crimes committed against a Jewess, was condemned to death by a court martial and shot. How could this sentence be explained if the military leaders had ordered and permitted the murder of many thousands of Jews?

Finally, I refer to the testimony of all witnesses before the Commission who testified that the Einsatzgruppen were not subordinate to the Wehrmacht. Now, on the Commissar Order.

The Prosecution has submitted affidavit 24, USA Exhibit 565, of Colonel von Doniehn, according to which this order was valid for all units of the Eastern Army. But the same affidavit shows that the Commanding General of the 47th Panzer Corps, General Lehnelsen. . .

THE PRESIDENT: Dr. Laternser, you are commenting upon evidence of the Prosecution. You are commenting upon USA Exhibit 565. At least, so I understand it.

DR. PELCKMANN: Mr. President, I believe I wasmisunderstood. I was only referring to a part of this document to which the Prosecution did not refer.

THE PRESIDENT: Well, the affidavit is in evidence I suppose, and it is in evidence for the Prosecution, and you are commenting upon it and that is not what we want you to do. We want you to present your evidence. Go on please.

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DR. LATERNSER: Very well. Refutation of the charge in regard to the Commissar order I supplement by a further affidavit. I turned over 82 to the Commission, numbered 301 to 376. I should like to go into this point in more detail, but in consideration of the haste, I shall dispense with it and only refer to special points which I absolutely must point out.

The testimony of General Warlimont in Affidavit 301-A shows resistence against the order when it was drawn up in the OKW and OKH and the unsuccessful attempt to prevent it. The Chief of the General Staff of the Army, General-oberst Hoeppner, immediately protested to Hitler against this order. It is thanks to him that the order was rescinded. That is shown by document 302-B. I ask that I may be allowed to quote one paragraph from this important document, 301-B.

THE PRESIDENT: 302-B, I thought. Which is it?

DR. LATERNSER: I believe that there is a mistake in the list which the President has. This document has been numbered 301-B.

THE PRESIDENT: Proceed.

DR. LATERNSERL I quote: "After I took up my duties as Chief of the Army's General Staff, I had a private conversation with Adolph Hitler, and a very plain and outspoken one regarding this command, and I explained matters in detail from all angles. Adolph Hitler was, at the time, as I remember, very much impressed by it. That struck me, because he otherwise never changed his opinion in such matters and cut short any person if such matters were referred to. For that reason I referred to it several times, and I believe I altered his opinion." I dispense with the rest of the affidavit.

I should like to refer particularly to Affidavit 315. This shows that Generaloberst Hoeppner, the Commander in Chief of Panzer Truppe 4, acted in the same way as the other commander in chief. That is, he did not carry out the order.

Then I refer to affidavit 324-A, B, and C. With these documents I refute the Russian prosecution on page 4[illegible]01 and on Page 1 of the Document USSR 62. General of the Panzer Troops confirms expressly in this affidavit that the order was not carried out in his jurisdiction. This testimony is

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confirmed by affidavit 336.

THE PRESIDENT: Go on, Dr. Laternser.

DR. LATERNSER: The testimony of General Major Pape, in affidavit 333, refutes this. It is the same division which Field Marshal Model commanded at one time. It refutes the Russian charge under USSR 62 and is based on the testimony of the soldier Trost. In this division, at the time when Field Marshal Model, then in a lower rank, commanded this division, the order was never carried out.

The testimony of Admiral Schmundt in affidavit 349 shows that the order was opposed in the Navy, which had only subordinate importance. But among the Allied troops no action for treatment of Russian commissars contrary to international law took place, as proved by the testimony of Lt. Col. Folmer regarding the 13th Rumanian division and for the area of the Italian expeditionary corps. He did not receive the order to pass on, and he did not pass it on.

I ask that the list on the Commissar order be examined especially carefully because the total shows that the order was not carried out. I would certainly have been in a position to present further evidence on this point if I had had more time.

THE PRESIDENT: You refer to 75. I think that perhaps is sufficient. I say you have already referred to 75 affidavits.

DR. LATERNSER: On partisan warfare, the Prosecution contends that in the East in particular, this fight was carried on contrary to international law. As evidence for these assertions, the Prosecution has referred to Affidavit 15 of General Roettiger, USA Exhibit 559, to Affidavit 20 of General Hausinger, USA Exhibit 564, to Affidavit 17, USA Exhibit 562, and to the testimony of the witness von dem Back Zelewski before the Commission. I cross-examined Hausinger and Roettiger, and I ask the Tribunal to take notice of this transcript. General Roettiger, which is affidavit No. 15, USA Exhibit 559, had raised an especially severe charge.

I ask the Court that I may be allowed to quote a few pages of the examination before the Commission concerning this point. General Roettiger had

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asserted that there were orders of the Commander in Chief of the army to take the most sever measures; furthermore, that only a few prisoners were taken; furthermore --

THE PRESIDENT: Dr. Laternser, we have got to consider, not these individual details, but we have got to consider the criminal character of the organization charged. First of all, whether it is an organization within the meaning of the charter, and, second whether it is a criminal organization. Here you wanted to draw our attention to individual details about partisan warfare in your cross examination of one witness before the Commission. As I have pointed out, we have nearly 3,000 affidavits to consider. If you would only give us the numbers of the affidavits which you say relate to a particular topic, then we shall know what relates to that topic and we shall be able to consider it.

DR. LATERNSER: But the Prosecution presented these deatils and they are an especially serious charge and I want to prove --

THE PRESIDENT: Yes, they did, and I have a reference to them. They were presented in the US affidavits 559 to 564, and I am perfectly well aware that you have cross examined the witness. What I want to know is what affidavits you want to draw our attention to in reply to the case of the Prosecution on partisan warfare.

DR. LATERNSER: I draw the attention of the Court to pages 3519 to 3523 of the Commission transcript. The result of the cross examination is that the affidavit of General Roettiger presented by the Prosecution was completely refuted.

I refer to Affidavits 901 to 1,043 and for the suppression of the Warsaw uprising, to affidavits 1501 to 1507. In detail, statements 901 to 905 contain general agreement on the partisan warfare in all theaters of war. Especially significant is affidavit 903, Fieldmarshal von Weichs. Affidavits 906 to 931 give examples of the methods of fighting of the partisans. 906 to 920 describe special atrocities committed by the partisans. Affidavits 921 to 924 prove the actions contrary to international law of the bandits. Affidavits 925 to 931 deal with the extent of sabotage against railroads.

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That the Germans fought according to the rules of international law, is proved by affidavits 932 to 970. They show that the partisans were treated like prisoners of war.

Affidavits 972 to 1033, about orders or intentions of the supreme leadership to combat partisans and destroy Jews or Yugoslavs, there was no question of this at the Front.

The affidavits 1033 to 1040 and 1050 deal with the charge against the commander-in-chief of the 18th Army, that on the 30th of October 1942 he ordered that all partisans were to be shot without distinction. In this connection, I refer to the affidavit of Generaloberst Lindemann also. He was the commander-in-chief of the 18th Army. This shows that such an order was never given, because the entry in the war diary of the Wehrmacht operational staff, 1786-PS, is incorrect. This affidavit 1033 is available in translation.

The affidavit 1041 of General von Melonthin is a description of a big partisan undertaking; in spite of an application of Army Group North to the OKH that the Army should be entrusted with the execution of this action, the undertaking was carried out under Himmler's leadership by General von Dem Bach Zelewski. This affidavit refutes the testimony of von Dem Bach Zelewski, who calls himself "an agency for the collection of information." To prove that this assertion by the witness von Dem Bach Zelewski is incorrect, I further refer to the testimony of the witness Hauesinger before the Commission; concerning the suppression of the Polish uprising in Warsaw, affidavits 1501 to 1507, the treatment of Generaloberst Guderian, 1501 in particular, certify that Police General von Dem Bach Zelewski was entrusted with suppressing the uprising. Second, that he was appointed to this task by Reichsfuehrer SS Himmler and was directly subordinate to Himmler. Thirdly, that he received his orders from Himmler; that is, not from the OKH nor from Army Group Center nor from the 9th Army. Fourth, that the troops employed in Warsaw were SS and police troops, including the SS Brigade Kaminsky. Fifth, that the special atrocities in Warsaw against the population were carried out by the SS Brigade Kaminsky which consisted of Eastern peoples and that this Brigade, to prevent further mischief, was

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removed from the battle and its leaders were punished. Sixth, that the 9th Army took special care of the population escaping from Warsaw.

I will not point out any more details of this affidavit 1501. As further proof that the army agencies had nothing to do with the battle in Warsaw, I present the testimony of General von Vormann, affidavit 1504 -- document USSR 128 -- on pages 161 and 162 of my document book 2, which also shows that the Wehrmacht had nothing to do with the destruction of Warsaw which was apparently intended in 1944.

I should like to refer particularly to partisan warfare in Italy. The prosecution has presented two orders by the commander Fieldmarshal Kesselring and sees in them violations of international law. I refer to the testimony of Fieldmarshal Kesselring before the Commission, page 2087 to 2124 of the Commission transcript. In this examination, the witness testified expressly that to suppress the uprising he had to take these temporary measures and that he thus succeeded in mastering the situation. This testimony of Fieldmarshal Kesselring is confirmed by affidavit 3004 of Roettiger.

Treatment of prisoners. The prosecution charges the military leaders with planning, permitting or committing crimes against prisoners of war which they are said to have committed in all theatres of war. The Russian prosecution, in particular, contends the special atrocities. I shall not mention them in detail. The accusations in so far as they affect the circle of persons whom I represent, I can refute by affidavits. I refer to affidavit 1101 of Fieldmarshal von Kuechler, which deals with the principles of the treatment of prisoners of war. Lt. Col. Scheder testifies in affidavit 1102 that in November 1941 in Oscha he participated in a discussion between the Chief of the General Staff, General Halder and the Chief of the three army groups on the Eastern Front, at which the feeding of prisoners was discussed. Army Group Center and South, who had particularly many prisoners asked the approval in case of an emergency to reduce the German troops' rations and be allowed to use army supplies to give the prisoners more to eat In this connection, I/refer to the affidavits 1103, 1104, 1104-A, 1105-A to C

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and 1106 to 1109, inclusive. A very particularly important affidavit is affidavit 3146 of General Girke. General Girke, from August 1939 to the end of the war, was chief of the transport system in the OKH. He describes that the transports of Soviet prisoners of war were treated exactly like the transports of other prisoners of war. They were carried through in close freight cars. Orders deviating from this were never issued. Open flat cars, as contended by the prosecution, were used only very seldom and only on transports on short stretches, because there was a great scarcity of this type of car. In no case were transports made intentionally in the winter in open cars in order to let the prisoners freeze to death. That is shown by affidavit 3146.

Now, I come to the refutation of individual points of the Russian prosecution in the field of the treatment of prisoners. On page 4337 of the transcript, it is contended that on the island of Portizza on the Dnieper corpses of Red Army men were found.

THE PRESIDENT: Dr. Laternser, the Tribunal has already said that it intends only to listen to you for half a day and unless you shorten or unless you have in mind the shortening of your address, it doesn't look as if you will be able to do it. If you can't do it, then we will have to take your documents as they are without any further reference. It seems to me that with reference to prisoners of war, all you have got to do is tell us what are the numbers of the affidavit which deal with it and say "I particula refer to" such and such an order or such and such an affidavit and then we shall know that you attach particular importance to those affidavits but to deal with it in detail like this is simply wasting our time. Anyhow, what I mean is, that at the endof half a day your address on these topics will cease.

DR. LATERNSER: Mr. President, I must have an opportunity to answer the accusations made by the prosecution.

THE PRESIDENT: You are having that opportunity at the present moment and you have had since twelve o'clock.

DR. LATERNSER: On page 4337 of the transcript it is asserted that on t island of Portizza on the Dnieper, corpses of Red Army men were found, whose hands had been cut off and whose eyes had been put out, whose stomachs had

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been cut open, and so forth. This is refuted by the affidavit of Fieldmarshal von Kleist, 1115, who was commander-in-chief of these groups. There were no German troops employed on this island. The Hungarian Corps was fighting there. That is shown by 1115.

In the Northern Sectorof the Eastern Front, according to page 4337 of the transcript, prisoners are said to have been driven before the attacking German troops of the field. This isclearly refuted by the testimony of the former commander-in-chief of the 18th Army, Generaloberst Lindemann. Affidavit 1116-A; these testimonies are confirmed by the affidavit of Colonel Holbe, No. 3159.

The Russian document USSR-151 and the presentation of the prosecution on page 4360 to 65 of the transcript contains the examination of General von Gostreich, containing especially serious charges in the field of treatment of prisoners. As counter evidence I present an affidavit No. 1117 which proves that the action in May 1941 was reproduced completely falst by Gostreich. In particular it refutes the assertion that orders were given that fleeing prisoners should be shot or prisoners incapable of work should be poisoned.

According to page 4387 of the transcript in the prison of Sevastopol, numerous prisoners are said to have been killed by intentionally poor treatment. This contention is clearly disproved by the testimony of the army doctor of the 11th Army, Generalstabsarzt Rosse, in his affidavit 1118.

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According to page 4388 of the transcript, on the 4th of September -- or December, 1943, three railroad trains full of prisoners of war are to have been taken from Kerch to Sevastopol and burned or drown there. This assertion is disproved by the testimony of Generals Deichmann and Roettiger who were both at that time in the Crimea given in affidavits 3140 and 3007. The Russian Prosecution attempts on page 4394 of the transcript to say that the fighting in the quarries near Kerch was bestial on the part of the Germans According to the testimony of a woman who apparently counted them, there were exactly 900 prisoners who were mistreated or shot. The testimony of the commanding general, General Mattenklot is in contradiction to this affidavit 1121.

The presantation in document USSR 62, and the Prosecution on page 4, 400 to 4,401 of the transcript, according to which on the orders of Field Marshal Model and General Nehring, no prisoners were to be taken. This is refuted by affidavits 1222 A to F, that is, by six affidavits on this particular point. On pages 4455 and 4456 of the transcript, mistreatment of prisoners in Norwegian Camps. Generaloberst von Falkenhorst in affidavit 112 proved that these prisoners were not under the military but under the SS.

Affidavits 1150 to 1160 testify that the wounded prisoners were everywhere treated like our own wounded. From various theaters of war there is testimony that the enemy himself recognized the good treatment. I submit statement 1161 and 1162, the latter recognition by the American General Storm. 1165 is a letter from the newphew of the English King, and 1166, that is from the RAF officers to the Commandant of the Air Corps Camp at Oberursel for the chivalrous attitude. Affidavit 1168 shows that the commander of the Fourteenth Division, General Heim, in October 1942, ordered for the German troops at Stalingrad, even though there was a scarcity of food for our own troops, that the Russian prisoners were to be fed. Further example of the chivalrous treatment of the captured enemy is given by the statement 1170 of Generaloberst Student, when there was infantile paralysis amongst the English prisoners on Crete, a transport was sent to Berlin for the necessary special serum. Oberstabsarze, Dr. Schaefer, in affidavit 1172, indicates that the Mountain Rescue Service in the Alps saved approximately 350 enemy

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flyers from death.

Document 1174 testifies to special personal chivalry.

THE PRESIDENT: Surely, Dr. Laternser, you can give us the reference to the numbers of the affidavits which state that prisoners were treated properly Why waste time about it by telling us what each affidavit says. You only have to tell us that these affidavits refer to good treatment by individuals.

DR. LATERNSER: Mr. President, if I only give numbers and do not refer at least partially to the contents, all the material will hardly have any weight because these affidavits are not translated. Of all my affidavits approximately 40 have been translated. If I cannot go into the contents at all, then --

THE PRESIDENT: We have got the summary before us in writing. What you are doing practically in every case is repeating the summary we have before us in writing. For instance, 1174 (Decent Treatment of English Prisoners) There is another one from some of the British officers showing who the British officer is and saying what he said about the treatment. Well, I have made it quite clear to you, I hope, that you will not be allowed to go beyond a half day; and now the Tribunal will adjourn.

(A recess was taken.)

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THE PRESIDENT: The Tribunal will not sit on Saturday next.

DR. LATERNSER: The Russian Prosecution assertions on pages 3336 and 3494, evidence to the contrary, affidavits 1176 following. The Russian Prosecution asserts that Soviet Prisoners of war were used in the service of the German Wehrmacht and were forced to do so. In this connection I should like to refer to affidavits 1179 to 1203, affidavits from which we see that within the period of one year the number of volunteers was 500,000 men.

Dealing with the treatment of prisoners in the Home area, I should like to refer to affidavits 1208 to 1213.

Regarding special measures for the prevention of excesses, I should like to refer to affidavits 1214 to 1216.

Dealing with destruction and plundering, I have sub-divided my material into five branches:

1. Alleged destruction and desecration of churches.
2. Destruction with the advance in the East.
3. Alleged destruction and plundering of cultural monuments and cultural cities.
4. Destruction connected with the retreat.
5. Plundering.

Affidavits 1301 to 1353 refute the assertion put forth by the Prosecution dealing with the destruction of numerous churches and their being desecrated. Most of the churches had already been destroyed or had already been desecrated or they had been made into museums. Affidavits 1301 to 1323 concern themselves with this subject. In the retreat, churches were especially protected: Affidavit 1324. Quite on the contrary, churches were once more restored to their religious purpose, as shown by affidavits 1325 to 1348. Special protection granted the churches in the French Campaign and the prevention of the destruction of the Cathedral at Rouen is shown by affidavits 1349 to 1353.

As far as branch 2 is concerned, dealing with the destruction on the advance, affidavits 1354 to 1401. Affidavits 1354 to 1362 prove a planned work of the Soviet Commandos charged with destruction under German advance. Affidavit 1363 shows tremendous destruction by the Soviet Russians in the Donitz

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Basin, as well as the same which applies for the industrial realm of Maikop, Artonisk, Dnjeptropetrowsk, Kriwoi-Rog, Orel, Ovchom-Kisograd Brjansk, Stalingrad, Saporoschje, Riga and Charkov.

In Riga, according to affidavit 1369, firebrand commandos were established who had petrol at their disposal and all of this is being brought forth to refute the record, pages 4812, 4819, and 4857.

The dam ad Dnieper was destroyed by the Russians themselves. Proof: Affidavits 1371 to 1384.

The chief reason for destruction in France in explain by affidavit 1400. Destructions in Greece were not carried out by the German troops but rather by the retreating troops and this is proved by affidavit 1401.

Dealing with Branch 3, destruction and plundering of cultural monuments, affidavits 1402 up to 1552 cover an unequivocal refutation of numerous statements. Affidavit 1402, deposed by Field Marshal von Kuechler, according to which objects of art were taken from the front areas to the rear region and safeguarded and secured for their solemn transmission to the Metropolitan of that city. Leningrad destruction determined by military necessity; affidavits 1403 to 1405 are proof and refute the witnesses Orboli and Numarti. Affidavits 1406 to 1411 refer to the destructions in the vicinity of Leningrad which in the majority were destroyed by Russian fire. This may be seen from affidavits 1406 to 1411. The famous estate of Tolstoi was protected by the Germans under express command by Colonel General Guderian, as shown by affidavits 1412 to 1418. One of these affidavits testifies that in the Russian Victory film of the spring of 1941 the Tolstoi Estate was shown complete and without any damage after the recapture by the Russians. The Tchaikovsky Museum wasnot plundered by the Germans: Proof, affidavits 1419 to 1422. Affidavits 1423 to 27 prove that the Observatory on Koltchovai was never in German hands and was not plundered by the German Wehrmacht. The plundering of the Naval Observatory at Sienais on the Island of Crimea, was not carried on by German troops, according to affidavit 1428. Instruments were removed by the Russians in their retreat before the German troops marched in. Destruction in Novgorod, affida vits 1429 to 1438. Petri Church and the famous house in Riga were not destroyed by the Germans but rather by the

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Russians themselves by setting fire to the houses. Riga, Rival and Novgorod suffered heavily through Russian bombing attacks. The church goods of Bleskav were not plundered by German troops. The Russians in 1941 took all these goods on a ship; it was sunk and remained there. Proof of this, affidavits 1429 to 1438. The monument, "1000 years of Russia", was treated by the Germans in a perfect manner; proof for this affidavit 1439. Never was an order given that 500 villages in the neighborhood of Rostov be set on fire. Proof 1441 to 1443.

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Proof, Affidavits 1441 to 43, Colonel General Mackensen did not take or rather rob the museum of valuable paintings. This is proved by affidavits 3,021.

Destruction in Kiev. Kiev came into German hands pretty much damaged. That is shown by affidavits 1441. The destruction was caused chiefly by too many bombs. The German troops did everything in order to do away with the mine, and in that way the Lenin Museum was saved. Hoses to fight fire were brought in from Germany by airplanes.

Proof for this, affidavits 1444 to 51.

Plundering in Tula never took place. German troops were never at Tula. Affidavit 1452 proved this.

Regarding destruction during retreats, refer to affidavits 1453 to 83. Affidavit 1883 by General Wohler proved the fact that at the last minute the wish of a higher Russian Church Principal was granted that church valuables would be secured.

Affidavits 1484 to 1500 and 1551 to 1591 prove that plundering of any kind was strictly prohibited. If anyone was guilty of plundering he would be severely punished even if it was of insignificant value.

Affidavit 3,024 is especially important. General Eberbacht deposed that the order given by Hitler in the summer of 1944 that everything was to be destroyed in the retreat from France, was not carried out by the Commander-in-Chief of the Seventh Army in agreement with Fieldmarshal Model.

As to the Italian Theater of war, we have the testimony of witnesses Weizsaecker and Kesselring and in addition, affidavits 3,009, 25 and 26. First of all, cities that were valuable were evacuated in good time. Monte Cassino, Bologna and Ravigni were protected. Thirdly, the destruction of industrial installations was not carried through through the personal intervention of a German General. The Port of Genoa was not bombed. This is shown in affidavits 3,008, 3,025 and 3,026. That port was not blown up.

I should like to refer to the Documents USSR 115, 168 and 119. I should like to refer to the Wehrmacht Communique of the 18th of May, 1940, in which it is shown that Louvain was taken after a hard struggle. The destruction of the university may be shown by the Witness Van Der Essen and can be traced back to arbitrary action.

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Treatment of civilian population: The Russian Prosecution has asserted on Page 4101 of the Trial Transcript, that according to the principles laid down by the Barbarossa order, the physical destruction of the people under suspicion has been put down. In order to refute that I should like to refer to affidavits 1601, 1601a and 1601b. There we see that frequently the death penalty was applied when it came to excesses, especially in cases of rape.

1601 proved three death sentences applied when crimes were committed against the family. On Page 4471, it is asserted that the German Wehrmacht on the first of July, 1944, had done much killing at Lemberg. I should like to refer to affidavits 1602, 1603 and 1604 which show that when the German troops marched in, many, many heaps of corpses which had been mutilated were found. On the second of July, a Moutaineer Division marched in. As far as mistreatment of Jews, in the area of Smolensk, according to the indictment, 100,000 corpses were found. Evidence to the contrary; 3,006 and 1607. It is easy to prove an especially good relation existed at Smolensk. The Cathedral was restored and re-opened. At the retreat of the German troops, large masses of the population followed the troops. That is proved by Affidavit 1608.

According to the assertion of the Prosecution, Pages 4354, at Kerch a certain number of children were poisoned. Evidence to the contrary; 1609, an affidavit by General Konrad. From this we can also see that the relationship with the population of the Crimea was especially good.

I should like to refer, particularly, to Affidavit 1611, and 1612, in this connection. According to the assertion found on page 4145 of the indictment a strict alarm by the Commander of Theodosia was ordered. Proof, affidavit 1612-a. There we see that the 260th Infantry Division never was on Crimea. Supplementary proof, 1614.

On page 4548, reprisals in Kiev were mentioned in the year 1941. I should like to refer to an affidavit deposed by General von Obstfelder, Page 15.

Affidavit 1616 is an affidavit given by the same General von Obstfelder. According to this, the German troops had reinstated an insane asylum. The insane asylum gave a terrific picture of negligence where the inmates had been left to themselves. Dealing with the murdering of 33,000 Jews in Kiev, I would like to refer to the affidavit deposed by General Heim, 1936, I believe it was. He knows no order to that effect. In the autumn of 1943, 193,000 men in Kiev

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allegedly were killed. Evidence to the contrary, 1116-a, 1116-b and 1116-c.

According to 45 and 49 of the record, the military Kommandantur in Stalingrad told everywhere how things were in Stalingrad. That may be seen from Affidavit 16, 17.

On pages 4605 and pages 4606, the accusation is raised that the German Wehrmacht had drowned 144,000 Jews in the sea, and in another spot, 144,000 citizens are mentioned who were taken into the ocean on ferries and then drowned. I should like to refer to Affidavit 1609, 3007, 3140, 1625 and 1625a. There we see, among other things, that the shipping space at their disposal was so smallthat not even the supplies of German troops could be handled by way of water in its totality, but rather that the Luftwaffe was charged to help out.

On Page 5,086 of the Trial Transcript, it is asserted quite generally that participation of the Wehrmacht in the persecution of the Jews is definitely set down.

I refer, now, to Affidavit 1629 deposed by Fieldmarshal von Kuechler. He very comprehensively pictures the condemnation of the Wehrmacht in this regard and endeavors to take steps to prevent excesses.

Affidavit 1630 and 1632 are of special significance in this connection where special measures of medical help, against the will of certain officers, in the spotted fever epidemic among the Jews were applied. There were no orders issued for the killing of Jews or other members of the population of the occupied territories.

I should like to refer to affidavits 3051, 3057, 3083, 3084, 3097, 3099, 3000, 3124, 3050, 3150 and 3127; a few documents of the Soviet Prosecution, USSR 291, Pages 1 to 3 assert atrocities in the area of Jasma, Rischevska and Rchev.

Affidavit 1633 deposed by General Praun deals with the accusation made by Weiss that people were hanged. Two women, at that time, were sentenced to death and were hanged publicly. Reasons? The murdering of 15 children and the sale of the flesh of these children on the open market. For that reason two women were hanged publicly at Rchev.

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USSR 2, Page 7, deals with slavery in Stalino; evidence to the contrary, Affidavit 2637, of General Kittel.

USSR 91, Pages 1 and 8 of the record, mentions atrocities near Leningrad and Pskov; refutation by Affidavit 1640, deposed by Field Marshal von Kuecher; the alleged shooting of 50,000 inhabitants of the town of Narva, refuted by the statement given by the same officer.

In Affidavits 1646 and 1647, numerous conter-measures for the city of Pleskau are testified to, and in Affidavit 1645.

USSR 39 deals with Estonia; refutation: evidence to the contrary by Field Marshal von Leeb, Affidavit 1641.

The attitude taken by these commanders-in-chief with respect to the Reichenau Order may be seen by Affidavits 1662, 1663, and 1665. Particularly the last affidavit, 1665, states the reasons according to which the decree was given by Reichenau. Among other things, one of the reasons was the murdering of two German officers.

Dealing with Italy, the correct behavior of the troops is testified to by Affidavits 1666, 1667, and 1670. Among them is an affidavit by Prince von Hesson, who, in his affidavit, also states the opinion of the last Italian king. Matters obtained in the same way in Yugoslavia; proof: Affidavits 1671 and 1672.

Especially good cooperation was found in Norway and Denmark; proof: Affidavits 1673 and 1674. Numerous examples of the endeavors of the Wehrmacht for cooperation with the Belgian and French populations, and above all through restrictive controls of troop discipline. From Affidavits 1675 to 1679 Colonel General Blaskowitz's dealings can be seen, and those of two other generals in Affidavits 1681 and 1682. From this it can be seen that the Wehrmacht took sharp measures against excesses on the part of the troops in Poland. As far as plundering is concerned, many strict measures were taken; proof therefor: Affidavit 1683.

It is known that in all occupied countries the proverb applied: "German soldier with eagle on the breast -- very good". And such a situation as that indicates the merit of the military leadership.

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With respect to the judicial system, I should first of all like to call the attention of the High Tribunal to the picture contained in my document book which has the number MIL 12, and which may be seen on Pages 74 to 76 of my document book. The High Tribunal can see from this picture that the commander-in-chief of an army was the ju icial overlord only for part of the army, and this may be seen from Page 74 of my document book.

As to the attitude taken by the military leaders regarding the judicial system, see Affidavits 501, 502-A, and 503. Furthermore, three of the highest judges of the former German Wehrmacht have been examined. Their attitude can be seen from affidavits 504, 505, and 506. Here we are concerned with Gen ral-oberstabsrichter Lehmann and Hammerstein. Both of them testified that punishments were very severe for crimes against the population of the East, and they testified how the Wehrmacht always made its will prevail over Hitler's will.

Dealing with the Kommando Order, the Prosecution has quoted the documents 502-PS, USA Exhibit 541, and 503-PS, USA Exhibit 542. These documents were submitted, and I should like to point out in this connection that both of these documents were signed by Hitler.

Affidavit No. 600 gives a comprehensive picture to the effect that his Kommando Order is to be traced back to the sole initiative on the part of Hitler, and without his having consulted his commanders-in-chief beforehand. Affidavit 600, therefore, refutes and contradicts the assertion put forth by the Prosecution that the military leaders, when this order was issued, participated in the setting up and the drafting of this order. Regarding the carrying through, or the execution, of this Kommando Order, the Prosecution has proved three cases which took place in Norway.

Unfortunately, I was not in a position to receive any material in the Italian theater of war.

According to the statement of the Prosecution, on the 2nd of November, 1942, three British Commando Troops were captured and turned over to the SD for special treatment: Documents 509-PS USA Exhibit 547. As far as the submission of this document 509-PS is concerned, the Prosecution will see a proof to the effect that this took place because of the instructions given by the OKW.

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This conclusion, of course, seems obvious, but as has been proved, it is not true.

I should like to refer to the testimony of General Westphal, given by him before the Commission, in which he states expressly under oath that these three British Commando Troops -- and the witness gave the place of their landing -- were not turned over to the SD, but rather were given to a prisoner of-war camp, and that the report to which the Prosecution refers, 509-PS, was an erroneous report to the OKW. In these three cases, therefore, the Kommando Order was not applied; evidence to the contrary: two documents, 503-PS, through the statement under oath by General Westphal before the Commission.

In the case of Dostler, my participation was not possible, for the records of the court martial were not put at my disposal. But I should like to refer to the fact that a supplementary order given by Field Marshal Kesselring was issued, and that he reserves the right to determine just when a Commando expedition actually took place. General Dostler does not belong to the great group of people involved.

According to Document L-151, USA 521, when this order was carried through, through the application of the Command Order, foreign military commissions allegedly were shot. I should like to refer to the contents of Document L-151, USA 521, from which we see clearly that the Wehrmacht had nothing to do with this matter.

I should further like to refer to Document C-178, from which we see that the General Staff of the Army and of the air forces objected to the Kommando Order; and further I should like to refer to Affidavit 610 regarding the application or non-application of the Kommando Order for the theater of war in the West, and supplementary affidavits, 611 and 622. Affidavit 611 shows that this order was not applied in the Netherlands. Affidavit 601 shows that this order was not applied in Africa, confirmed by Affidavit 603-C and 603-D. In the Italian theater of war, Affidavits 614 and 621 show that the order was not applied there, and of particular importance is Affidavit 619,

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in which proof is given that Field Marshal Kesselring reserved the right to determine when a Commando enterprise was being dealt with.

I should further like to point out, and refer to Affidavits 3147 and 3148 from which we also see that the commander in chief in the Southeast decreed that English Commando Troops who were landing on the Aegean islands were not to be considered as commandos but rather they were to be treated as German prisoners-of-war.

General Boehme affirms in Affidavit 3147 --

THE PRESIDENT: Dr. Laternser, you have over half a day now. The Tribunal would like to know what it is further that you have to refer to.

DR. LATERNSER: Mr. President, in a minute I shall complete my reference to the Kommando Order, and then I shall refer briefly to the deportation of workers. That will take perhaps two minutes, and then I shall deal with crimes against humanity war crimes. I believe, Mr. President, that I shall conclude in twenty minutes altogether.

THE PRESIDENT: Dr. Laternser, the Tribunal has already -- at least I have already pointed out to you over and over again that all you are doing in substance is to read out what is already before us in writing, with certain references in addition to the Prosecution's evidence. In nearly every case we have before us in writing exactly what you say about these affidavits.

There is no use nodding your head at me. I have checked it and that, in the opinion of the Tribunal, is quite unnecessary. You can go on and you must refer us to the affidavits which you say relate to these topics, which you have properly announced as topics upon which youwere going to produce documents. That is to say, deportations, rules of war and humanity, and you may refer to the numbers of the affidavits which deal with that and refer us also to the numbers, particularly of the documents which have been translated, and then we shall know where to find the documents which are important. Now, will you please go on?

DR. LATERNSER: I had left off with the statement that according to Affidavit 3174, the Kommando Order did not apply to the 20th Mountain Division and that is was changed by the agreement of the Commanding General.

Affidavit 625 proves that the Kommando Order was not carried out in the naval sector of Italy. For the Eastern Theater of War, Affidavits 608 and 616, as well as 624, show that the order was not carried through.

THE PRESIDENT: In order to show that I was entirely accurate in what I said to you, what we have before us is 608, General Bilka, "Rejection of the order by all Commands in the East. No instance of shooting." Go on.

DR. LATERNSER: With respect to the participation or the alleged participation of the military leaders in the deportation of workers, I should like to refer to Affidavits Number 2001 to 2019, and that is all I should like to say to this point.

THE PRESIDENT: Dr. Laternser, have any of them been translated?

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DR. LATERNSER: No, your Lordship. Mr. President, that is the misgiving which I had, for if the affidavits were translated --

THE PRESIDENT: Dr. Laternser, 2001, the substance of the affidavit is in the summary; the same in 2002, 2003, 2004, 2004-A and right on down to 2019. The substance of the affidavit is in the summary before us. It doesn't help us in the least to have it repeated by you.

DR. LATERNSER: Regarding the attitude held by the military leaders dealing with humanity and rules of war, I should like to refer to those Affidavits 505 to 514 and furthermore, in this connection I should like to refer to the documents which are found in my document book 440-PS, pages 105 and 106, of the document book, 2329-PS, pages 105 to 112, 2-C 119, pages 116 to 119, and to the publication and announcements found on pages 120 to 141 which applied and were valid for the various Theaters of War.

Affidavit 531 has been submitted in order to refute the accusation according to which the German military leadership tried to bring about an incident between Hungary and Russia in that German areas with Soviet insignia attacked Hungarian territory. The High Tribunal will remember this assertion. Affidavit 531 refutes this through the officer who was the IC Officer with the Commander in Chief of the Luftwaffe.

In order to refute the assertion that military directives dealing with the murdering of air crews who had been shot down, I should like to point out that Affidavits 652 to 659 apply in this connection. 651 especially, shows that the Wehrmacht protected the airmen who had been shot down, protected them against the excited population. The fact that lynching was condemned and rejected may be seen from the Affidavits 518 and 519, 520-A. Two of these affidavits refer to the Chiefs of the General Staffs of the Air Forces, General Koller and General Kleipe. Particularly may be seen from Affidavit 520-A that General Kleipe took steps against civilians through official channels where they practiced violence against fliers.

521 is an affidavit deposed by Gallant, Lt. General Gallant, who

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testified that German fighter squadrons never received orders to carry on the fight when the hostile crew members had parachuted. Affidavit 522 --

THE PRESIDENT: How do you think it helps the Tribunal for you to have made the statement which you have just made, when we have before us Affidavit Number 521, "General Gallant, 7746, no order was ever given for the combatting of shot down crews." Now, do you really think that you have added anything to that?

DR. LATERNSER: Mr. President, I wanted to be a little more explicit and have only tried to be a little more brief, and that is the reason why I am trying to be a little more breif, but I shall conclude in a moment, Mr. President.

I should like to refer to Affidavits Numbers 522 and 523, both of which show that rescue measures for enemy fliers are dealt with and are proved, and in conclusion, I should like to refer to Affidavits 3103, 3106. In both of these affidavits it is proved that the battleships Scharnhorst and Gneisenau rescued the survivors of the British auxiliary cruiser Ravalpinsi, even though the British cruiser had sent out an S.O.S. and was expecting to receive aid from their own naval forces, whereas our own battleships could have been cut off from the return.

Affidavit 3106, deposed by Conter-Admiral Peters, dealing with the spring of 1941 with the battleships Scharnhorst and Gneisenau, and they deal also with an incident in 1943 where a German U-boat went to Spitzbergen to rescue theship wrecked in that area where the U-boat was sent out for that purpose, and in this way I have concluded my submission of documentary evidence.

I should like to mention that the documents which have been translated, Documents 124, 933, 935, 939, 1501, 508-A, 508-B, 513 and 514-B, I should like to introduce these documents at this time.

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Regarding my document which is concerned with the speech of General Beckett, on the occasion of the anniversary of the 125 years' existence of the Military Academy of the War College, I should like in conclusion to state and refer to this fact where this speech shows and sets out the attitude of the military leaders.

DR. BOEHM: Mr. President, may it please the Tribunal, first of all I should like to submit an index to the High Tribunal, from which it can be seen that the document books, SA-1, A, B, 2, 3, and 4 have been submitted. I should like to submit these documents; and I shall do that when I have the originals at my disposal, the original text of the transcripts of the Commission sessions, affidavits, affidavits for the General SA, and especially twenty-one affidavits which have been translated, and an additional sixty-eight affidavits which have been deposed and dealt with before the Commission, 17,087 affidavits which have been dealt with in summary, then affidavits of the SA in so far as they deal with the members of the SA who have been taken over from the Steel Helmet organization, and their respective transcripts of the Commissions' sessions, and documents dealing with the mounted units, seventy-two affidavits, of which Nos. 1, 13, 21, 24, 29, 30, 64, 68, 70, 72 , and 75 have been translated. Then an index which lists the individual affidavits in so far as they apply to the General SA, to the Steel Helmet organization, and to the mounted unit. I should like to submit this index to the High Tribunal.

THE PRESIDENT: Have you submitted it?

DR. BOEHM: Mr. President, I shall submit this material as soon as I have received it; and at this point I reserve the right to call the attention of the High Tribunal to it. This will be just a matter of but a few minutes. In the first part of my presentation of documents, I shall submit documents which show what legal compulsion the National Socialist State put on the young generation so that its entrance into the various units

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of the Party would be brought about and compelled.

They show how the various youth organizations were taken into the H. J. We see that when these young people reached the age of eighteen, they were taken into the Party and to the various branches of the Party and the SA. So that the youth would be taken in, decrees were given out to the various universities and institutes of higher learning so that the student bodies received certain authority. This may be seen from Document 147. This refers to Bavaria only but it applies to all of Germany.

The Document SA-141 proves the so-called Prussian rule which applies to the training of the students and their being brought into the community and their training for Wehrhaftigkeit is shown. Document 156 refers to this. On the basis of this decree, which applied to all institutes of higher learning in the Reich, all students were forced to go into the SA if they were not physically unfit. They did not have to report to the Hochschulamt but to the various SA Stuermen. This office was later dissolved. The institutes had to report to the local agencies. They remained in the SA; and the obligation to serve in the SA in this respect is referred to, as may be shown by Document 151. This is an excerpt from the monthly periodical of the B. Z., Catholic German Youth Organizations association.

These matters did not suffice in the National Socialist State. Therefore, in the year 1936, all students from the first until the third semester were taken o er into the N. S. student body. Document SA-151 should be seen in this connection, that the National Socialist student body took over the obligation that all those who were studying would have to belong to the Party as well; and many, many German students in this way were once more incorporated into the SA. In Document 159-SA we see what results non-compliance with this directive had.

It shows that a period of study without membership in the SA or a similar formation was quite impossible.

Document SA-164 shows that in Prussia the first step of legal

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coercion was taken. It is clearly shown that the Prussian Ministry for Culture and Education said that service in the SA was the prerequisite for being admitted to teachers' examinations; and as Document SA-165 shows, in the year 1935 we can read in the official dispatch on Page 56 that one of the conditions for becoming a teacher was membership and activity in an organization such as the SA.

It is, of course, natural that the legal compulsion was most strong with those who were economically the most weak. I should like to prove this by submitting Document SA-167.

Document S_-170 shows that even those students beginning with the sixth grade were not exempt from this compulsion with activity in the N. S. P. and its various formations. This legal coercion in the intermediate schools is shown in my final plea; and I shall also deal with the compulsion applied to personnel replacements.

Document 162 shows that the law for the restoration of civil servants had turned out to be something quite different. Document 173 is a commentary dealing with German Servants Law of the year 1937. It says on Page 67 of young German officials, it was required of the young Erman as far as his physical condition permits that he be a member of the SA or the SS. For the development which was started for the restoration of civil servants, they have as model in career other German officials, in Paragraph 2 of this directive. And we return to Document SA-178: Applicants must belong to the Party or one of its formations or must have belonged to them.

In this connection I should like to refer to Document SA-175; and as an exception I should like to deal at length with this document and quote it. "Finally each applicant for an official position will have to comply with the demand that he belong to the Party or one of its formations, for the official shall not only belong to the SA or to the SS but rather he must have been in the Hitler's Youth as well. Through the law of the 1st of Dece

ber, 1936, the Fuehrer has grouped the entire German students with the aims that outside of the home and school they be trained in the sphere of National Socialism in the Hitler Youth spiritually, ethically, and physically, and to have them trained for service to the communities.

I should like to cite further that the material contents arose from the various branches and were developed organically. This kind of newly setting up of the law is in accordance with the basic principle of National Socialist conduct of the State. It is not as in the case of a state which has just given out laws which sound pretty. It does not only apply because the organs of the state were not sufficient; but the organs of the Third Reich will set up the conditions necessary first and then the necessary corresponding law will be issued.

The period of time 1933 to 1939 is an epoch in which one law after the other appeared and one directive after the other came out. Some of these directives are set out in my document book. Document SA-171 shows that apprentices could be taken only from such formations as the SA and SS. In the year 1934, as Document SA-183 shows, in order to receive any practical training, the condition was presupposed that a membership such as that in the SA existed; and the same applies, as may be shown by Document 165. This was true in the case of the Reich-Bahn, the railroads.

One can say, in order to give a common denominator, the young generation was forced into the N.S.D.A.P. through law and directives. In Document 180 it says, " An exceptional case give. me the occasion to point out once more to all organizations engaging in training courses for higher posts, as well as to the assistants and construction assistants already belonging to the administration that they should actively cooperate in the Party or its formations." This is not an exceptional case given by the Reichsminister of Transportation but rather it is typical for all districts dealing with all legal matters. We can see that every sphere of life will be coordinated in the same way.

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Documents SA-181, 186 and 188 show that the Reich Postal System presupposed membership in the NSDAP. That may also be seen from 191.

Number 194 shows that the Reich Minister of Justice was not satisfied with but a formal membership, but rather demanded an active membership in the Party or its formations, such as the SA. That the police did not make any exception either may be shown by SA document 196. Membership in the NSDAP or one of its formations was a condition of one's coming into the police.

Number 197 is a collective document, and it concludes with directives issued in 1944.

Documents 200, 201, 203, 208 and 211 of the SA show that service in the SA is required for the replacement of men. It is regrettable ---

THE PRESIDENT: What is regrettable?

DR. BOEHM: Please:

THE PRESIDENT: Finish your sentence.

DR. BOEHM: Yes of course. I shall submit all the documents, Mr. President.

THE PRESIDENT: We will adjourn now.

(The Tribunal adjourned until 22 August at 1000 hours).